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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 109. 68.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

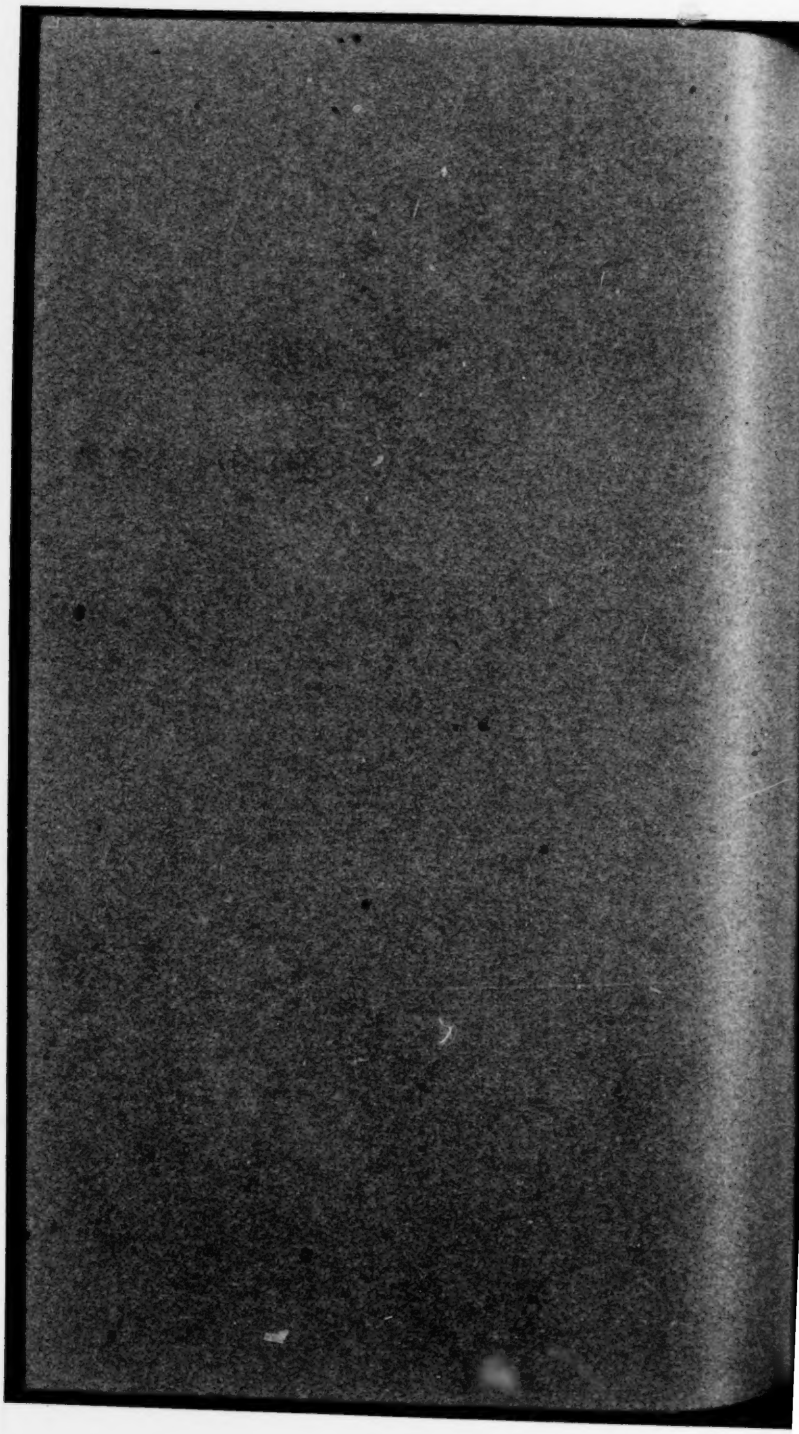
vs.

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MAY 26, 1899.

(SIGNED)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 307.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a United States of America, fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court room of said court in the city of New Orleans, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees.	No. 751.

Be it remembered that heretofore, to wit, on the 29th day of July, 1898, a transcript of the record of the above styled cause from the circuit court of the United States for the northern district of Georgia, was filed in the office of the clerk of said United States circuit court of appeals, in the words and figures following, to wit:

1 *Bill of complaint.*

Filed in clerk's office 27 day of May, 1893. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; The Georgia Railroad and Banking Company; The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond and Danville Railroad Company and The Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; D. H. Chamberlain, receiver; H. M. Comer, receiver; and Reuben Foster and F. W. Huidekoper, receivers.	In equity, No. 525.

To the circuit court of the United States, sitting in equity within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893,

HUMBLY COMPLAINING

showeth unto your honors that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws

of the State of South Carolina, having its principal office at Charleston, in the said State of South Carolina; that the South Carolina Railway Company is a corporation created, chartered, and existing under and by
2 virtue of the laws of the State of South Carolina, having its principal office at Charleston, in the said State of South Carolina, and the defendant D. H. Chamberlain is the receiver thereof; that the Georgia Railroad and Banking Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in the said State of Georgia; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the said State of Kentucky; that the Central Railroad and Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Savannah, in the said State of Georgia, and the defendant H. M. Comer is the receiver thereof; that the Richmond and Danville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Virginia, having its principal office at Washington, in the District of Columbia, and the defendants Reuben Foster and F. W. Huidekoper are the receivers thereof; that the Georgia Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Birmingham, in the said State of Alabama.

That the said corporate defendants were at the time of the committing of the grievances hereinafter specially mentioned and still are common carriers, engaged in the transportation of persons and property, partly by rail and partly by water, under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, and particularly were the said defendants then engaged in the said business from the city of New York and other North Atlantic ports to Atlanta, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, all in the State of Georgia, and as such common carriers were, during all the time aforesaid and still are, subject to the provisions of the said act, entitled "An act to regulate commerce," and said amendments thereto.

That the said corporate defendants were heretofore, to wit, on the 22d day of October, 1891, duly impleaded in a controversy, not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon the petition of L. N. Trammel, Allen Fort, Virgil Powers, constituting and composing the Railroad Commission of Georgia, duly and legally created by the laws of the State of Georgia, for an alleged violation on the part of the said defendants of the provisions of the said act, entitled "An act to regulate commerce," as at large and more fully appears in and by said petition on file in the office of the said commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A; that a copy of said petition,
3 duly attested by the secretary of the said Interstate Commerce Commission, under the seal of the said commission, was duly forwarded by said Interstate Commerce Commission to each of the defendants aforesaid, as required by the thirteenth section of the said act.

That thereafterwards, to wit, on the 30th day of November, 1891, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia filed their joint answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 4th day of December, 1891, the South Carolina Railway Company, by Daniel H. Chamberlain, receiver thereof, filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 12th day of December, 1891, the Richmond and Danville Railroad Company, in its own behalf and of the Georgia Pacific Railroad Company, filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 25th day of March, 1892, the Central Railroad of Georgia filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, at a special session thereof, duly and legally assembled for that purpose, at the city of Atlanta, in the State of Georgia, on the 24th day of March, 1892, whereof all the parties had due and sufficient notice, when said complainants, the Georgia Railroad Commission, as well as the said defendants, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, the Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That thereafterwards, to wit, on the 3d day of September, 1892, the Louisville and Nashville Railroad Company, by its attorney, Ed. Baxter, filed a petition requesting a continuance of the said cause brought by the said Georgia Railroad Commission, as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit F.

4 That thereafterwards, to wit, the said Commission duly formulated an order denying the said petition of the Louisville and Nashville Railroad Company, hereinabove referred to as a part hereof, as at large and more fully appears in and by said order on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendants had violated the provisions

of the said act entitled "An act to regulate commerce," in certain respects as was stated in the said petition herein referred to as a part hereof, and thereupon, on the 11th day of November, 1892, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties and made a report in writing thereon, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by said report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit I.

That thereafterwards, to wit, on the 11th day of November, 1892, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants; and thereupon the petitioner shows that it has not been made to appear to the said Commission that, although more than twenty days have elapsed since the service of the said order upon the said defendants, that the said defendants have ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard, and have willfully and knowingly violated and disobeyed said order and notice, as hereinbefore set forth, hitherto neglected and refused and still do neglect and refuse to comply with the same, in this, that the said defendants have not since, to wit, the 1st day of March, 1893, ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of property from New York and other North Atlantic ports for the shorter distance to Atlanta, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, all in the State of Georgia, than for the longer distance over the same line in the same direction, to Atlanta, in the State of Georgia; the said defendants not having, prior to, to wit, the 1st day of March, 1893, made application to the said Commission for relief under the proviso clause of the fourth section of the act to regulate commerce.

WHEREFORE THE PETITIONER PRAYS—

1. That a subpœna, or other suitable process may issue according to the course of equity, requiring the Clyde Steamship Company, the South Carolina Railway Company, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; the Richmond and Danville Railroad Company; the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; D. H. Chamberlain, receiver; H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers, severally to appear at such time and place as this honorable court may determine, then and there each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants, and attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum
6 of money, not exceeding the sum of $500, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioners' cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.] By EDW. A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

7 EXHIBIT A.

8 L. N. TRAMMELL, ALLEN FORT, VIRGIL Powers, constituting and composing The Railroad Commission of Georgia,

vs.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH Carolina Railroad Company; The Georgia Railroad and Banking Company; The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, Lessees of the Georgia Railroad; The Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, Lessees of the Central Railroad of Georgia.

The petition of the above-named complainants respectfully shows:

First. That they compose and constitute the railroad commission of the State of Georgia; that said commission has been duly and legally created by the laws of the State of Georgia and that its duties, under the laws of said State, are to make reasonable and just rates of freight and passenger tariffs to be observed by all railroad companies doing business in this State on the railroads thereof, and, among other matters, to investigate all through freight rates from points out of Georgia to points in Georgia, and whenever the said commission finds that the through rate charged into Georgia is excessive, unreasonable, or discriminating in its nature they shall call the attention of the railroad officials in Georgia to the fact, and that, when such rates are not changed, it shall be the duty of the commission to present the facts to the Interstate Commerce Commission and appeal to it for relief.

This commission, therefore, having no personal or pecuniary interest in the matter herein set out, except to see that the law is enforced for the benefit of society, and the discharge of the duties prescribed for them by the laws of the State of Georgia, come now and in the public interest complain in their own name, but for the sole interest of the public, and say:

Second. That the defendants above named are common carriers, and, under a common control, management, or arrangement for continuous carriage or shipment, are engaged in the transportation of passengers and property, partly by water and partly by railroad, between Eastern points, to wit, New York, Boston, Philadelphia, and points in the State of Georgia, and as such common carriers are subject to the act to regulate commerce.

Third. That such (and said) common carriers, under such common control, management, or arrangement for continuous carriage, have made and fixed, and have heretofore and do now charge, collect, and
9 receive from the people of this State the following-named rates for tariff for through freight shipped and transported by them from the city of New York, in the State of New York, to the termini of and stations on the Georgia Railroad, in the State of Georgia, to wit:

Through rates of freight from New York, Philadelphia, etc., via Charleston, to Georgia Railroad stations.

	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	43	41	65	83	83
Madison	144	123	107	89	71	56	47	60	44	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	44	43	66	86	85
Covington	141	122	108	91	73	58	48	60	41	43	69	87	86
Conyers	138	119	105	80	75	59	47	59	46	44	70	85	88
Stone Mountain	132	114	101	85	71	58	45	57	46	44	69	80	90
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first-class, second-class, etc., and Class A, Class B and C, and the figures in the lines opposite the name of the town or station mean so much in cents as expressed by said figures on the hundred pounds of freight of each class.

That the transportation of like kind of through freight is under substantially similar circumstances and conditions to such terminus and stations on said Georgia Railroad, and that said carriers have not been authorized by your Commission to charge less for longer than shorter distances for the transportation of said through freight.

Petitioners further show that the city of Augusta, in the State of Georgia, is the eastern terminus of said Georgia Railway, one of the common carriers so engaged as aforesaid in the transportation of passengers and property, partly by water and partly by railroad, under such common control, management, and arrangement for continuous carriage from the city of New York and other Eastern points, and that the city of Atlanta, in the State of Georgia, is the western terminus of the said railroad, and the two cities, which are the termini of said road, are located and distant from each other as follows: Augusta, by the line of railroad, is distant from Atlanta one hundred and seventy-one miles.

And your petitioners show that, notwithstanding the town and station of Greensboro is 88 miles east of Atlanta and 83 miles west of Augusta, and that Madison is 68 miles east of Atlanta and 103 miles west of Augusta, and that Social Circle is 52 miles east of Atlanta and 119 miles west of Augusta, and that Covington is 41 miles east of Atlanta and 130 miles west of Augusta, and that Conyers is 31 miles east of Atlanta and 140 miles west of Augusta, and that Stone Mountain is 16 miles east of Atlanta and 155 miles west of Augusta, the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of New York and other Eastern points to the towns and stations of Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, are more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of New York (and other Eastern points), which is the shipping point in both instances, and so the rate collected and charged for freight shipped from New York by the defendant to the towns and stations on the said railroad is greater than the rate collected and charged by them to the city of Atlanta, notwithstanding the fact that the city of Atlanta is at a greater distance from said shipping point, and there is no water competition.

Your petitioners say that, in their opinion, the rates of freight into the towns and stations on said railroad in the State of Georgia, as aforesaid, were unreasonable and discriminating in their nature, and your petitioners, as a commission, called the attention of the officials of the said Georgia

Railroad to the fact and urged upon them the propriety of changing such rate, but the said officials refused and declined to change the same, and continued and still continue to charge and collect the aforesaid rates of freight to the towns and stations as aforesaid.

Whereupon petitioners, as the railroad commission of the State of Georgia, come and present the facts as aforesaid, and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia and to the different towns and stations of the Georgia Railroad, so made and charged and collected by the carriers, as aforesaid, is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled "an act to regulate commerce."

Wherefore petitioners pray that the defendants may be required to answer the charge herein, and that, after due hearing and investigation, an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and to such other and further order as the Commission may deem necessary in the premises.

Dated Atlanta, Georgia, October 16, 1891.

L. N. TRAMMELL.
ALLEN FORT.
VIRGIL POWERS.

STATE OF GEORGIA, *Fulton County:*

L. N. Trammell, being duly sworn, says that he is a member of the Georgia railroad commission, the complainants in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

L. N. TRAMMELL.

Subscribed and sworn to before me this 16th day of October, 1891.

[L. S.] BEN. J. DAVIS,
Notary Public, Fulton County.

11 EXHIBIT B.

12 *Interstate Commerce Commission.*

THE GEORGIA RAILROAD COMMISSION
against
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILROAD COMPANY, THE GEORGIA RAILROAD AND BANKING COMPANY, et al.

The joint answer of the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, the two last-named companies being lessees of the Georgia Railroad, to the petition filed before the Interstate Commerce Commission by L. N. Trammell, Allen Fort, and Virgil Powers, composing the railroad commission of Georgia, against the Clyde Steamship Company, these respondents, and others.

I. Respondents admit that petitioners compose and constitute the railroad commission of the State of Georgia; but whether said commission has been duly or legally created by the laws of the State of

Georgia, and as to what are the duties of said commission under the laws of said State, respondents prefer that the laws be allowed to speak for themselves.

II. Respondent, the Georgia Railroad and Banking Company, is the owner of what is known as the Georgia Railroad, but several years ago it leased said railroad for a long term of years, not yet expired; and its corespondents, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, are jointly the assignees of the original lessee of said Georgia Railroad, and operate the same.

Respondent, the Georgia Railroad and Banking Company, is not, therefore, a common carrier, and does not participate in any of the rates of traffic referred to in said petition.

III. Respondents, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, as joint lessees of said Georgia Railroad, are common carriers, and operate said Georgia Railroad; and, as such lessees, together with some of the other defendants named in said petition, they are engaged in the transportation of passengers and property, partly by water and partly by railroad, between Eastern points, to wit, New York, Boston, and Philadelphia, and points in the State of Georgia; but these respondents are not under any common control, management, or arrangement with said other defendants for the continuous carriage or shipment of passengers or property.

13 IV. It is true that respondents, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, as lessees of said Georgia Railroad, have, together with their connections, made and fixed, and have heretofore, and do now, charge, collect, and receive from the people of the State of Georgia the following-named rates for tariff for through freight shipped and transported by them from the city of New York, in the State of New York, to the termini of, and stations on, the Georgia Railroad, in the State of Georgia, to wit, as shown in Schedule A, hereto filed and made part hereof.

V. Respondents deny that the transportation of like kind of through freight is done under substantially similar circumstances and conditions between New York, Philadelphia, etc., and Atlanta, as is the transportation done between New York, Philadelphia, etc., and the other stations on the Georgia Railroad, mentioned in the petition. On the contrary, respondents aver that the transportation of freight between New York, Philadelphia, etc., and Atlanta is controlled directly by active competition with rival lines; whereas transportation between New York, Philadelphia, etc., and the other stations on the Georgia Railroad, mentioned in the petition, is only indirectly affected by said competition at Atlanta.

VI. Respondents admit that the city of Augusta, in the State of Georgia, is the eastern terminus of the Georgia Railroad, and that the city of Atlanta, in said State, is the western terminus of said railroad, and that said cities are distant from each other 171 miles.

These respondents admit that the other stations on the Georgia Railroad, mentioned in said petition, are distant, respectively, from Atlanta and Augusta as stated in said petition.

Respondents admit that the rates of freight charged, collected, and received by them for freight transportation by continuous carriage from the city of New York and other eastern points to the other stations on the

Georgia Railroad, mentioned in the petition, are more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of New York and other eastern points.

It is true that there is no water competition directly at Atlanta, but there is fierce, active competition by railroads at that point, and some of those railroads are not subject to the control of the Interstate Commerce Commission.

VII. Respondents deny that the rates of freight to any of the towns or stations on the said Georgia Railroad, in the State of Georgia, are unreasonable or discriminative in their nature. On the contrary, respondents aver that all of said rates are fair, equal, and open to all, and that they do not discriminate against any person or place.

It is true that petitioners did call the attention of the officials operating the Georgia Railroad to, and urged upon them the propriety of changing said rates, but after the fullest investigation and most
14 careful consideration, said officials respectfully declined to change said rates, and continued, and still continue, to charge and collect the same, because, as stated above, they believed said rates to be fair, just, and undiscriminating in their character.

ED. BAXTER,
JOS. B. CUMMING,
Solicitors for Respondents.

STATE OF GEORGIA, *County of Richmond:*

Charles H. Phinizy, beirg duly sworn, says that he is the president of the Georgia Railroad and Banking Company, and acting as general manager of the Georgia Railroad, appointed by the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, its lessees; that he is in charge of the operations of the said Georgia Railroad, and that the matters set forth in the foregoing answer are true, as he verily believes.

C. H. PHINIZY.

Subscribed and sworn to before me this 21st day of November, 1891.
[SEAL.]
WM. LYON MARTIN,
Notary Public, Richmond County, Ga.

SCHEDULE A.

Through rates of freight from New York, Philadelphia, etc., via Charleston, to Georgia Railroad stations.

	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	61	43	42	67	85	84
Social Circle	144	125	109	90	72	57	4	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	48	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43½	70	88	87½
Stone Mountain	132	114	101	85	71	58	45	57	46	44	69	80	89½
Atlanta	114	98	86	73	60	49	36	48	40	39	58	68	78

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first class, second class, etc., and Class A, Class B, and C, and the figures in the lines opposite the name of the town or station mean so much in cents, as expressed by said figures, on the hundred pounds of freight of each class.

15 EXHIBIT C.

16 *The United States of America.—Interstate Commerce Commission.*

THE GEORGIA RAILROAD COMMISSION
against
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILROAD COMPANY, The Georgia Railroad and Banking Company, et al. } Answer.

The answer of the South Carolina Railway Company, by Daniel H. Chamberlain, receiver of said company, to the petition filed before the Interstate Commerce Commission by L. W. Trammell, Allen Fort, and Virgil Powers, composing the railroad commission of Georgia, against the Clyde Steamship Company, this respondent, and others.

I. This respondent says that the South Carolina Railway Company, which is an entirely distinct corporation from the South Carolina Railroad Company, referred to in the petition, is a corporation under the laws of the State of South Carolina, being the purchaser of the property and franchises of said South Carolina Railroad Company, and under the order of the circuit court of the United States for the district of South Carolina, sitting in equity in the case of F. W. Bound vs. The South Carolina Railway Company and others, bearing date the 7th October, 1889. This respondent was appointed receiver of the said railway company, and is now operating the same under the order of said court.

II. This respondent admits that petitioners compose the railroad commission of the State of Georgia, but as to whether said commission has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, this respondent prefers that said laws should speak for themselves.

III. This respondent admits that he operates the said South Carolina Railway Company as a common carrier, and that with some of the other defendants named in the petition he is engaged in the transportation of freights and passengers and property, partly by water and partly by railroad, between Eastern points, to wit, New York, Boston, and Philadelphia, and points in the State of Georgia, but this respondent road is not under any common control, management, or arrangement with said other defendants for the continuous carriage or shipment of passengers or property.

IV. It is true that this respondent, together with the connections of the road managed by him, has made and fixed, and has heretofore
17 made and fixed, the following-named rates per tariff for through freight shipped and transported from the city of New York to the termini of and stations on the Georgia Railroad in the State of Georgia, as shown in Schedule A, filed and made a part hereof, a portion of which rates have been paid to this respondent for such transportation.

V. This respondent denies that the transportation of like kind of through freight is done under substantially similar circumstances and conditions between New York, Philadelphia, etc., and Atlanta as is the transportation done between New York, Philadelphia, etc., and the other stations on the Georgia Railroad mentioned in the petition. On the contrary, this respondent avers that the transportation of freight between

New York, Philadelphia, etc., and Atlanta is controlled directly by active competition with rival lines; whereas transportation between New York, Philadelphia, etc., and the other stations on the Georgia Railroad mentioned in the petition, is only indirectly affected by said competition at Atlanta.

VI. This respondent admits that the city of Augusta, in the State of Georgia, is the eastern terminus of the Georgia Railroad, and that the city of Atlanta, in said State, is the western terminus of said railroad, and that said cities are distant from each other 171 miles. This respondent admits that the other stations on the Georgia Railroad, mentioned in said petition, are distant, respectively, from Atlanta and Augusta as stated in said petition. This respondent admits that the rates of freight charged, collected, and received for freight transportation by continuous carriage from the city of New York and other Eastern points to the other stations on the Georgia Railroad, mentioned in the petition, are more and greater in each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of New York and other Eastern points.

It is true that there is no water competition directly at Atlanta, but there is fierce, active competition by railroads at that point, and some of those railroads are not subject to the control of the Interstate Commerce Commission.

VII. This respondent denies that the rates of freight to any of the towns or stations on the said Georgia Railroad in the State of Georgia are unreasonable and discriminating in their nature. On the contrary, respondent avers that all of said rates are fair, equal, and open to all, and that they do not discriminate against any person or place. And this respondent has no knowledge or information except as derived from said petition as to any demand having been made upon said Georgia Railroad for a change in said rates.

SOUTH CAROLINA RAILWAY COMPANY,
By D. H. CHAMBERLAIN,
Receiver.

18 SCHEDULE A.

Through rates of freight from New York, Philadelphia, etc., via Charleston, to Georgia railroad stations.

	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	143	123	109	94	77	62	49	61	45	43½	55	89	88
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	93	76	61	48	60	48	46½	74	88	94
Conyers	138	119	105	90	74	60	47	59	47½	46	72	85	93
Stone Mountain	133	114	101	85	71	58	45	57	46	44½	69	80	90½
Atlanta	114	98	86	73	60	49	36	48	40	39	58	68	78

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first-class, second-class, etc., and class A, class B, and C, and the figures in the lines opposite the name of the town or station mean so much in cents as expressed by said figures, on the hundred pounds of freight of each class.

THE STATE OF SOUTH CAROLINA, *County of* .

Daniel H. Chamberlain, being duly sworn, says that he is receiver of the South Carolina Railway Company; that he is in charge of operations

of the said South Carolina Railway Company, and that the matters set forth in the foregoing answer are true, as he verily believes.

DANIEL H. CHAMBERLAIN.

Subscribed and sworn to before me this 1st day of December, 1891.

J. HAGOOD,
Notary Public for South Carolina.

19 EXHIBIT D.

20 [Richmond and Danville Railroad Company, office of general solicitor, Washington, D. C.]

Interstate Commerce Commission.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, Railroad Commissioners of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY; THE SOUTH CAROLINA Railroad Company; The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond and Danville Railroad Company and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia.

The answer of The Richmond and Danville Railroad Company in its own behalf and of The Georgia Pacific Railway Company, respondents as aforesaid.

The Richmond and Danville Railroad Company in its own behalf, and in behalf of The Georgia Pacific Railway, of which it is the lessee, without waiving and specially reserving all rights of objection and exception legally inuring to it in this matter, hereby makes answer to so much and such parts of the petition of the said complainants as it is advised it is necessary and material for it to answer, and says:

First. That the said Georgia Pacific Railway Company is not a proper party respondent to said petition and complaint, because it is not true, as therein alleged, that at the time of the filing thereof the said The Georgia Pacific Railway Company was "engaged in the transportation of passengers and freight, partly by water and partly by railroad, between Eastern points, to wit: New York, Boston, Philadelphia, and points in the State of Georgia," under a common control, management, or arrangement for continuous carriage or shipment with its corespondents herein, and by reason whereof is "subject to the act to regulate commerce," or to the jurisdiction of the Interstate Commerce Commission; and it is denied that the said petitioners, complainants, have any lawful right to require or compel the said the Georgia Pacific Railway Company to appear and answer the charges made in said petition before the said honorable Commission, or that the said Commission has any authority or jurisdiction
21 to require it so to do, or investigate the same and make any order in respect thereof which may be, or be intended to be, effective against or obligatory upon the said The Georgia Pacific Railway Company,

and that by reason whereof the said railway company has good right to ask and insist, and hereby does ask and insist, that, as to it, the said petition be forthwith dismissed.

Second. That it is true, as alleged in said petition, that at and before the time of the filing of thereof the said Georgia Pacific Railway and all the railroad and other property and rights ("except mineral lands not necessary for the operation of said railroad") were duly leased to the said The Richmond and Danville Railroad Company, which said lease was at said time and thence hitherto and now is in full force and effect, and that said lease demises and conveys to the said lessee company "the sole and exclusive right, power, and authority to hold, occupy, use, enjoy, control, manage, and operate the same" (meaning the said railroad, property, and rights of the said The Georgia Pacific Railway Company), "and to regulate, fix, vary, demand, collect, receive, and dispose of all and every the rates, tolls, revenues, and charges to accrue thereon and therefrom," whereby, and by reason whereof, it is manifest, and now here averred to be the fact, that the said The Georgia Pacific Railway Company is not and can not be guilty of any of the said charges made and contained in said petition nor amenable to any investigation or order respecting the same.

Third. That each and every allegation in the said petition made and contained charging the said The Georgia Pacific Railway Company with the commission of any act or acts in violation of the provisions of the said act of Congress entitled "An act to regulate commerce," is hereby denied.

Fourth. That paragraph second and so much of paragraph third as is repetitive thereof in said petition contained is denied, except it is admitted that the said respondents, others than the said The Georgia Pacific Railway Company and the said The Central Railroad Company of Georgia, are common carriers.

Fifth. That so much of paragraph third of said petition as charges, or is intended to charge, that "the rate for tariff for through freight shipped and transported from the city of New York, in the State of New York, to the termini of and stations on the Georgia Railroad, in the State of Georgia," as set forth and scheduled in said paragraph, are "made and fixed under a common control, management, or arrangement for continuous carriage," to which either of the respondents hereby answering is a party, or in which they or either of them has any voice or vote, is hereby denied, and on the contrary it is averred that neither of these said respondents make, fix, or have any power or authority over said rates, nor to control, alter, modify, or interfere with the same.

Sixth. That each and every allegation in the said petition made and contained charging the said respondents hereby answering, either
22 jointly or severally, or intended so to charge, with any act or acts in violation of the provisions of the act of Congress entitled "An act to regulate Congress" is denied.

Wherefore the said respondents hereby answering pray that the said petition as to them and each of them be dismissed.

THE RICHMOND AND DANVILLE RAILROAD COMPANY,
For itself and for The Georgia Pacific Railway Company.

By JAS. T. WORTHINGTON, *General Solicitor.*

STATE OF GEORGIA, *City of Atlanta, ss:*

Sol. Haas, being first duly sworn, says that he is the traffic manager of The Richmond and Danville Railroad Company, making the foregoing answer, and that the matters therein set forth are true as he verily believes.

SOL. HAAS,
Traffic Manager.

Sworn to and subscribed before me this 10th day of December, 1891.

[SEAL.] CHAS. P. LEE,
Notary Public.

23 EXHIBIT E.

24 *Interstate Commerce Commission.*

BY THE GEORGIA RAILROAD COMMISSION
against
THE CLYDE STEAMSHIP COMPANY, THE South Carolina Railroad Company, The Georgia Railroad and Banking Company, et al.
Answer of The Central Railroad of Georgia.

Complaint for violation of section 4 of an act to regulate commerce.

The Central Railroad of Georgia, one of the above-named respondents, for its separate answer to the complaint herein (without waiving and specially reserving all rights of exception and objection thereto) respectfully says:

First. The respondent admits that petitioners compose and constitute what is known as the railroad commission of the State of Georgia. But whether said commission has been duly and legally created by the laws of the State of Georgia; that they possess the powers and privileges claimed for them in their complaint, or that they have any personal or pecuniary interest in the matter therein stated, this respondent does not know, does not admit, and demands that the same be proved.

This respondent most emphatically denies that said Georgia railroad commission has any right or authority for complaining in the matter of the said company before the honorable Interstate Commerce Commission, or of making this respondent a party to said proceeding. It further denies that said complaint is made for the sole interest of the public. On the contrary, this respondent affirms that the granting of the various requests would be detrimental to the public interest.

Second. That it denies each, every, and any allegation in said complaint charging it with any act or acts in violation of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and amended March 2, 1889.

Third. That it denies each, every, and any other charge or allegation against it made or contained in said complaint.

Wherefore this respondent respectfully prays that the said complaint may be dismissed as to it.

THE CENTRAL RAILROAD OF GEORGIA,
By THOS. COBB JACKSON,
Counsel.

25 STATE OF GEORGIA, *City of Atlanta, ss:*

Sol. Haas, being first duly sworn, says that he is the traffic manager of the Central Railroad of Georgia, the respondent making the foregoing answer, and that the same is true as he is informed and believes.

SOL. HAAS, *Traffic Manager.*

Subscribed and sworn to before me this twenty-third day of March, 1892.

[SEAL.] A. A. MEYER,
Notary Public in and for the County of Fulton, Ga.

27 EXHIBIT F.

28 [Louisville and Nashville Railroad Company.]

OFFICE OF DISTRICT ATTORNEY,
Nashville, Tenn., September 3, 1892.

Ga. R. R. Commission vs. W. & A. and L. & N. R. R. Cos. et al.—7897.
Ga. R. R. Commission vs. Clyde S. S. Co., L. and N. R. R. et al.—7894.
Ga. R. R. Commission vs. Clyde S. S. Co., So. Car. Rd. et al.—7979.
Ga. R. R. Commission vs. L. & N. and N. C. & St. L. Ry. et al.—7980.
Ga. R. R. Commission vs. So. Car. R. R. and L. & N. R. R. et al.—7981.

EDW. A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: In reply to your telegram of 24th ultimo.

These cases involve the same question as the Social Circle case, which has been prepared for trial, with the hope that it can be heard at the approaching term of the United States Supreme Court. Mr. Safford writes me that his health is such that he can not argue the Social Circle case for several weeks, but I am in hopes that he will recover in time to argue that case so as to get it heard at the approaching term of the United States Supreme Court. The decision of that case by the Supreme Court will virtually settle all of these cases, and I respectfully request that the Commission continue these cases, say for ninety days, or until we can see if the Social Circle case can be heard by the Supreme Court at the approaching term.

Will you kindly present this application for me?

Yours, truly,

ED. BAXTER, *District Attorney.*

29 EXHIBIT G.

30 At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 19th day of October, A. D. 1892. Present: Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Commissioners.

THE GEORGIA RAILROAD COMMISSION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al. and six other cases.

On reading the application of Edward Baxter, esq., counsel for the above-named defendant, for postponement of the decision of these cases for ninety days, or until after the determination of the so-called Social Circle case, entitled upon the record, "Interstate Commerce Commision against The Cincinnati, New Orleans and Texas Pacific Railway Company et al.," and now pending in the United States circuit court for the northern district of Georgia, it is ordered that said application be and is hereby denied.

71 EXHIBIT I.

72 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of November, A. D. 1892. Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, Commissioners.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,
v.
THE CLYDE STEAMSHIP COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; The Georgia Railroad and Banking Company; The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia. — No. 314.

This complaint being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, said report and opinion is hereby referred to and made a part of this order; and the Commission having, as appears by said report and opinion, found and decided, among other things, that the common carriers operating the Clyde Steamship Line, the South Carolina Railway, and the Georgia Railroad are not justified under the fourth section of the act to regulate commerce in charging or receiving more in the aggregate for the transportation of a like kind of property from New York and other North Atlantic ports for the shorter distance to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, in the State of Georgia, than for the longer distance over the same line in the same direction to Atlanta, in the State of Georgia.

It is ordered and adjudged, that the Clyde Steamship Company, the South Carolina Railway Company, and D. H. Chamberlain, the
73 receiver thereof, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, as lessees of the Georgia Railroad, H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, the Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, as lessees of the Central Railroad of Georgia, and F. W. Huidekoper and Reuben Foster, receivers of the Richmond and Danville Railroad Company; that is to say, such of them as are operating, as common carriers, the Clyde Steamship Line, the South Carolina Railway, and the Georgia Railroad, respectively, do wholly cease and desist, within twenty days after service of a copy of this order, from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from New York and other North Atlantic ports for the shorter distance to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, in the State of Georgia, than for the longer distance over the same line in the same direction to Atlanta, in the State of Georgia, the shorter being included within the longer distance; or, that said common carriers do, within the time above specified, make and file with this Commission an application or applications, as may be required and as provided in the proviso clause of the fourth section of the act to regulate commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York and other North Atlantic ports to the shorter distance points aforesaid than for such transportation over the same line in the same direction for the longer distance to Atlanta aforesaid, and show cause within sixty days after the service of this order why such application or applications for relief should be granted, and upon such application or applications the evidence already taken herein may be used. In case said common carriers elect to apply for relief as hereby provided, and such application for relief, after investigation by the Commission, be denied, then the order to cease and desist as hereinabove set forth shall stand, and said common carriers will be required to comply therewith within twenty days after service of the order denying said application.

It is further ordered, that a notice embodying this order be forthwith sent to each of said common carriers, together with a copy of the report and opinion of the Commission herein, in conformity with the fifteenth section of the act to regulate commerce.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, nine in number,
74 and marked A to I, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the

said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 16th day of May, 1893.

[L. S.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

[L. S.] (Signed) EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

75 *Order for defendants to show cause, &c., and for service.*

In the circuit court of the United States for the northern district of Georgia, March term, 1893.

INTERSTATE COMMERCE COMMISSION *versus* THE CLYDE STEAMSHIP COMPANY; THE SOUTH Carolina Railway Company; The Georgia Railroad & Banking Company; The Louisville & Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond & Danville Railroad Company and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia; D. H. Chamberlain, receiver; H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers.	No. 525. Petition under interstate-commerce act. Order of notice to defendants. In equity.

These proceedings having been filed under the act to regulate commerce, approved February 4, 1887, as amended March 2, 1889, February 10, 1891, and February 11, 1893.

It is ordered and directed by the court that the defendant corporations appear before the United States circuit court for the northern district of Georgia, at the court room in Atlanta, Georgia, on the 10th day of July, 1893, at 10 o'clock a. m., to answer such proceedings and to show cause why the prayer of petition should not be granted; and it is further ordered that a copy of this order be served on each of the corporations of this State by serving the principal officer of the same, and that the nonresident defendant corporations be served by the clerk of this court mailing copy of this order in a registered letter, addressed to the
76 president or chief officer at the principal office of such corporation set out in said petition, and such corporations as are in the hands of a receiver in the same manner, or service may be acknowledged by counsel representing such defendants; and it being represented to the court that copies of the petition or bill are printed and convenient (without holding the same to be necessary and proper notice under act above referred to) the clerk is directed to attach a copy of said petition or bill to each of said orders or notices, and let them be served therewith.

In open court this 19 day of June, 1893.

WM. T. NEWMAN,
U. S. Judge.

Service.

I hereby certify that I have this 20 day of June, 1893, mailed a certified copy of the within order and a copy of the petition in this case in registered letters as follows:

To the president or chief officer of Clyde Steamship Co., Charleston, S. C.

To the president or chief officer of South Carolina Railway Company, Charleston, S. C.

To the president or chief officer of Louisville & Nashville R. R. Co., Louisville, Ky.

To the president or chief officer of Richmond & Danville R. R. Co., Washington, D. C.

To the president or chief officer of Georgia Pacific Ry. Co., Birmingham, Ala.

D. H. Chamberlain, receiver South Carolina Railway Co., Charleston, S. C.

Reuben Foster & F. W. Huidekoper, receivers Rich'd & Danv R. R. Co., Washington, D. C.

O. C. FULLER, *Clerk.*

Service of duplicate original on H. M. Comer, president, &c.

I certify that on the 22nd day of June, 1893, at Savannah, in my district, I personally served a copy of the within petition and order on H. M. Comer, president of the C. R. R. and Banking Co. of Ga., and on H. M. Comer, and at the same time exhibiting this, the original.

Dated Savannah, Ga., June 22nd, 1893.

Return of FRANK LEVERETT, *U. S. Marshal.*
By J. C. HEYWARD, *Deputy.*

Filing: Returned and filed in office June 23, 1893. O. C. Fuller, clerk.

77 *Order allowing defendants thirty days to answer.*

In the circuit court of the United States, for the northern district of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
CLYDE STEAMSHIP COMPANY AND SOUTH CAROLINA Railway et al. } No. 525.

By consent of parties it is ordered, in the above-stated case, that the defendants, and each of them therein named be, and they are hereby, allowed thirty days from this date to answer all proceedings in the above-stated case, with all of the rights of pleading to said petitions now enjoyed by said defendants.

It is further ordered that the judge of this court may during vacation

by order direct the method in which testimony may be taken therein, and appoint an examiner or other officer to take such testimony.

In open court this 10th day of July, 1893.

WM. T. NEWMAN, *U. S. Judge.*

Filing: Filed in clerk's office 10 day of July, 1893.

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD, *Deputy Clerk.*

Answer of the Georgia Railroad and others.

The joint and several answer of the Georgia Railroad and Banking Company; the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, sued as lessees of the Georgia Railroad, to the petition filed by the Interstate Commerce Commission against the Clyde Steamship Company, these respondents, the Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; D. H. Chamberlain, receiver; H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers; in the circuit court of the United States for the northern district of Georgia, in equity, No. 525, on the rule docket of said court.

78 I. Respondents admit that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South Carolina, and that it has its principal office at Charleston in said State; that the South Carolina Railway Company is a corporation created, chartered, and existing under by virtue of the laws of the State of South Carolina; that it has its principal office at Charleston in said State, and that defendant D. H. Chamberlain is the receiver thereof; that the Georgia Railroad and Banking Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia; that it has its principal office at Augusta in said State; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, and that it has its principal office at Louisville in said State; that the Central Railroad and Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia; that it has its principal office at Savannah in said State, and that defendant H. M. Comer is the receiver thereof; that the Richmond and Danville Railroad Company is a coporation created, chartered, and existing under and by virtue of the laws of the State of Virginia; that it has its principal office at Washington in the District of Columbia, and that the defendants Reuben Foster and F. W. Huidekoper are the receivers thereof; that the Georgia Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, and that it has its principal office at Birmingham in said State.

II. Respondent, the Georgia Railroad and Banking Company, is the owner of what is known as the Georgia Railroad, but several years ago it leased said railroad for a long term of years not yet expired; and its corespondents, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, are jointly the

assignees of the original lessee of said Georgia Railroad, and they operate the same.

Respondent, the Georgia Railroad and Banking Company, is not therefore a common carrier, and does not participate in any of the rates of traffic referred to in said petition.

III. Respondents admit that, with the exception of the Georgia Railroad and Banking Company, the corporate defendants were on October 16th, 1891, and still are, respectively, common carriers engaged in the transportation of persons and property over their respective roads. That some of them are so engaged wholly by water; that some of them
79 are so engaged wholly by rail, and that some of them are so engaged partly by rail and partly by water.

Respondents are not under any common control or management with any of their codefendants, for continuous carriage or shipment, except that, as stated above, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia are the assignees of the lessee of the Georgia Railroad.

Neither are respondents under any common arrangement with their codefendants for continuous carriage or shipment, except that the Clyde Steamship Company receives shipments of freight at New York destined to Atlanta, Ga., for which it issues its through bills of lading, at certain agreed rates, which bills of lading are protected by the Georgia Railroad, and certain agreed proportions of said through rates are accepted by said Georgia Railroad as its compensation for carrying such shipments from Augusta to Atlanta. But respondents have at all times declined to form through rates, or to agree upon through rates to or from the local stations of the Georgia Railroad; and, as to all of such local stations, respondents are under no common control, management, or arrangement for continuous carriage or shipment.

IV. Respondents deny that they were duly impleaded in any kind of a controversy before the Interstate Commerce Commission on October 22nd, 1891, though it is true that on or about October 16th, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the railroad commission of Georgia, filed a petition before the Interstate Commerce Commission, a copy of which petition is filed as Exhibit "A" to the petition in this case. Whether said railroad commission of the State of Georgia has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, these respondents prefer that said laws shall speak for themselves.

V. Respondents admit that a copy of said petition, duly attested by the secretary of said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Commission to each of respondents, and respondents suppose that similar copies were forwarded to each of the defendants named therein.

VI. Respondents admit that on or about the 30th day of November, 1891, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia filed their joint answer to said petition
80 before the Interstate Commerce Commission, and that Exhibit "B" to the petition filed in this case is a correct copy of said answer.

VII. Respondents admit that on or about the 4th day of December, 1891, the South Carolina Railway Company, by Daniel H. Chamberlain, receiver thereof, filed its answer to said petition before said Commission, and that Exhibit "C" to the petition filed in this case is a correct copy of said answer.

VIII. Respondents admit that on or about the 12th day of December, 1891, the Richmond and Danville Railroad Company, in its own behalf, and on behalf of the Georgia Pacific Railway Company, filed its answer to said petition before said Commission, and that Exhibit "D" to the petition filed in this case is a correct copy of said answer.

IX. Respondents admit that on or about the 25th day of March, 1892, the Central Railroad of Georgia filed its answer to said petition before said Commission, and that Exhibit "E" to the petition filed in this case is a correct copy of said answer.

X. Respondents admit that the matters complained of in said petition filed by L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of the State of Georgia, came on to be heard before said Interstate Commerce Commission, at a special session thereof, held at Atlanta, Georgia, on or about the 24th day of March, 1892, whereof respondents had due and sufficient notice.

XI. Respondents deny that it was made to appear that respondents had, in any respect, violated any of the provisions of the act to regulate commerce. Respondents deny that said Interstate Commerce Commission duly or legally determined the matters or things in controversy between said parties. Respondents admit that said Commission, on or about the 11th day of November, 1892, made a report in writing in respect thereof, and that Exhibit "H" to the petition filed in this case is a correct copy of said report.

Respondents admit that said report included certain alleged findings of fact, upon which certain alleged conclusions of said Commission were based.

XII. Respondents admit that said Commission formulated an order and notice in relation to the matters and things stated and charged in said petition filed before said Commission; but respondents deny that said order and notice was duly made, or that it was made agreeably to the requirements of the statute in such cases made and provided, or that it now remains in force or effect; though respondents admit that said order and notice has never been vacated or set aside, altered, modified, or changed in any respect by said Commission, and they admit
81 that Exhibit "I" to the petition filed in this case is a correct copy of said order and notice.

XIII. Respondents admit that they were furnished with properly authenticated copies of said report and order and notice, on or about the 11th day of November, 1892.

XIV. Respondents deny that they or either of them have been unmindful of their duty or of any lawful decision or determination of said Commission, or that they have, through their officers, servants, or attorneys, or otherwise, disregarded or set at naught the lawful authority of said Commission; or that they have willfully or knowingly, or at all, violated or disobeyed any lawful order or notice of said Commission; or that they have neglected or refused to comply with any lawful order of

said Commission at Atlanta, Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, in the State of Georgia, or elsewhere. Respondents admit that neither of them have applied to said Commission for relief from the operation of the fourth section of the act to regulate commerce, and the reason that no such application has been made is that they have never done or proposed to do anything which required release from the operation of that section.

XV. Respondents are advised and insist that said order and notice made and issued by said Commission was and is unlawful and void, for the following, among other, reasons:

First. The transportation of property from New York and other North Atlantic ports to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, in the State of Georgia, is not conducted under substantially similar circumstances and conditions with the transportation of property from New York and other North Atlantic ports to Atlanta, Ga.

Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are local stations on the Georgia Railroad.

There is no navigable water course at either of said places. There is no other railroad at either of said places, except at Madison and Social Circle, and there is no competition by either rail or water existing at any of said places which affects the rates in controversy. Freight rates to said places from New York and other North Atlantic ports are combination rates, arrived at by taking the rates from New York and other North Atlantic ports to Atlanta or Augusta, Ga., and adding thereto certain reasonable local rates from Atlanta or Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, respectively. Atlanta or Augusta is selected as the basis for making said combinations of rates according as the through rates to the one or the other of
82 those cities added to local rates will make the lowest combination of rates of said local stations, respectively.

Said local rates are reasonable, and are approved by the railroad commission of the State of Georgia, under an act of the legislature of that State which authorizes said commission to decide upon the reasonableness of such rates.

The through rates from New York and other North Atlantic ports to Atlanta and Augusta, respectively, are fixed by active competition between various lines of transpor'ation, some of which are all rail and some of which are part water and part rail. To Augusta some of the lines are all water.

The Clyde Steamship Company's line of steamers from New York to Charleston and the South Carolina Railway from Charleston to Augusta form one of said part water and part rail lines to Augusta, and those two lines, in connection with the Georgia Railroad, form one of said part water and part rail lines to Atlanta.

It is impossible for those lines to obtain any higher through rates to Augusta or Atlanta, respectively, than are charged by their numerous and powerful competitors.

There is also active competition between the various lines above referred to as running from New York and other North Atlantic ports to Augusta and Atlanta, respectively, and certain other lines running

from Cincinnati and other Ohio and Mississippi River points to Augusta and Atlanta, respectively; said competition being for the carriage to Augusta and Atlanta, respectively, of products similar to those carrried there from New York and other North Atlantic ports.

Said lines running from New York and other North Atlantic ports are forced to accept rates which bear a certain relation to the rates offered on similar products by the lines running from Cincinnati and other Ohio and Mississippi River points to Augusta and Atlanta, respectively.

The Clyde Steamship Company and the South Carolina Railway Co. divide in certain agreed proportions the through rates charged from New York and other Atlantic ports to Augusta, but the Georgia Railroad receives no proportion of said rates to Augusta, as it performs no part of the transportation.

When freight from New York and other North Atlantic ports destined to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain are tendered to the Clyde Steamship Co. at New York for shipment via Augusta, that company issues its own through bills of lading and guarantees that the total rates to destination shall not exceed the through rates to Augusta added to the local rates of the
83 Georgia Railroad charged on such shipments from Augusta to said points of destination, respectively; but the Clyde Steamship Co., the South Carolina Railway Company, and the Georgia Railroad do not obligate themselves or either of them for the continuous carriage or shipment of such freight beyond their own lines, respectively, nor does the Clyde S. S. Co. nor the So. Carolina Ry. Co. assume to control in any way the local rates which may be charged upon such freights by the Georgia Railroad.

Neither the Clyde S. S. Co. nor the So. Carolina Ry. Co. receive any part of the local rates charged by the Georgia R. R. for transportation from Augusta to Greensboro, Madison, Social Circle, Covington, or Stone Mountain.

It is wholly immaterial to the Clyde S. S. Co. and to the South Carolina Ry. Co. whether freight shipped from New York and other North Atlantic ports via Augusta stops at Augusta or goes forward to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain.

The Georgia R. R. declines to form a through route or to agree upon through rates to its said local stations from New York and other North Atlantic ports. It receives shipments destined to such stations for the first time at Augusta, and insists upon charging the same rates from Augusta to destination as if said shipments had originated at Augusta. The Georgia R. R. and its said connections east of Augusta charge the highest through rates which competition will allow them to obtain on all freight shipped from New York and other North Atlantic ports via Augusta through to Atlanta, and if they should be forced by decree in this case to raise said rates to Atlanta all such shipments would go by rival lines.

While the proportions which the Georgia Railroad receives of such through rates to Atlanta is small, they are more than the additional cost of such transportation; and therefore it is to the interest of that railroad as well as of the public that it should be allowed to compete for that traffic.

But if said railroad were forced to carry all of its traffic at rates as low as the proportions which it receives from said through rates, it would be impossible for it to earn operating expenses.

If the order made by the Commission in this case should be enforced, the Georgia Railroad would be forced to abandon said through rates to Atlanta and adhere to its present local rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain. Those stations, therefore, would not be benefited in the least, and the only result would be to deprive Atlanta of the benefit of the competition now
84 afforded by the Georgia Railroad, and to deprive the Georgia Railroad of such revenue as it now derives from the Atlanta traffic.

And having fully answered, respondents pray to be hence dismissed, with their reasonable costs.

JOSEPH B. CUMMING,
[L. N. SEAL.] ED. BAXTER,
Solicitor for Respondents, Louisville and Nashville Railroad Company.
By M. H. SMITH, *President.*

Attest:
J. H. ELLIS, *Secretary.*

STATE OF KENTUCKY, *Jefferson County:*

Personally appeared before me, G. W. B. Olmstead, a notary public duly appointed, commissioned, and qualified in and for the State and county aforesaid, M. H. Smith and J. H. Ellis, who are respectively the president and secretary of the Louisville and Nashville Railroad Company, the above-named respondent, and signed the foregoing answer, and affixed thereto the seal of said company as the answer of said company.

Witness my hand and notarial seal of office, at Louisville, Ky., this 8th day of August, 1893.

[SEAL OF N. P.] G. W. B. OLMSTEAD,
Notary Public.

Filing: Filed in clerk's office 10 day of Aug., 1893. O. C. Fuller, clerk.

Answer of the Richmond & Danville Railroad et al.

In the circuit court of the United States for the northern district of Georgia.

INTERSTATE COMMERCE COMMISSION,
vs.
CLYDE STEAMSHIP COMPANY AND OTHERS. } In equity. No. 525.

Joint answer of the Richmond & Danville Railroad Company, the Georgia Pacific Railway Company, and F. W. Huidekoper and Reuben Foster, receivers of the Richmond & Danville Railroad Company.

85 *To the honorable the judges of the circuit court of the United States for the northern district of Georgia:*

These respondents, answering, say:

I. These respondents admit the filing of the petition before the Interstate Commerce Commission by the railroad commission of Georgia as

alleged in the petition herein, and that Exhibit A, annexed to said petition, is a true copy thereof. These respondents also admit that on said 20th day of January, 1892, the lines of the said Central Railroad and Banking Company of Georgia were leased to the respondent The Georgia Pacific Railway Company, and were operated by the respondent The Richmond & Danville Railroad Company; and further admit that said Interstate Commerce Commission did hear the matter as alleged in the petition herein, and did make a report in writing thereon, of which Exhibit J, annexed to said petition, is a true copy, and did thereafterwards issue and duly serve on each of these respondents the order of which Exhibit K, annexed to said petition, is a true copy.

These respondents, however, aver that before the hearing of said matter before the Interstate Commerce Commission, to wit, on the 4th day of March, 1892, the said lines of the Central Railroad and Banking Company of Georgia were, by order of the circuit court of the United States for the southern district of Georgia, placed in the hands of a receiver of said court, and thereupon the said lease of said lines to the respondent The Georgia Pacific Railway Company was surrendered and annulled, and said respondent ceased to have any possession or control of said lines, and the said Richmond & Danville Railroad Company ceased to hold and operate the same, all of which facts were well known to said Interstate Commerce Commission at the time of making their said report.

II. Respectfully answering, these respondents say that the said Richmond and Danville Railroad Company and the Georgia Pacific Railway Company were parties to the said proceedings before the Interstate Commerce Commission only in the character and relation of lessee of the Central Railroad and Banking Company of Georgia, which character and relation to the matters of said proceedings had ceased as aforesaid before the hearing by the Interstate Commerce Commission and the making of its report and order thereon.

That the said report finds no facts relative to the conduct of either of the respondents, The Richmond & Danville Railroad Company or The Georgia Pacific Railway Company, in the transportation as a common carrier of freight or passengers on the lines of railroad operated by
86 either of said respondents at the date of the hearing on which said report is made. That in none of the routes described and mentioned in said report does any railroad then or now operated by either of said respondents form a part.

These respondents respectfully call the attention of the court to the following language on page 4 of said report:

"As to the second of the minor questions whether certain of the defendants, to wit, the Georgia Railroad & Banking Company, the Central Railroad and Banking Company, the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company, are common carriers controlling rates and operating roads parts of through lines between points of shipment and destination, it seems sufficient to hold generally that only those who are in any degree responsible for transportation charges over the respective roads will be expected to comply with any order for the readjustment of those charges which may hereafter be issued in these proceedings."

These respondents aver that it is not true, as alleged in the petition herein, that these respondents, "unmindful of their duty and the decision

and determination of the said Commission as stated in its report aforesaid, have through their officers, servants, and attorneys wholly disregarded and set at naught the authority of the said Commission in that regard, and have willfully and knowingly violated and disobeyed said order and notice as hereinbefore set forth, hitherto neglected and refused and still do neglect and refuse to comply with the same;" because the said report under the facts found and by its express terms had no application to any line operated either by the Richmond & Danville Railroad Company or the Georgia Pacific Railway Company, and the said order of the Commission based on said report does not apply to either of said respondents.

III. Further answering, these respondents say that said order of the Commission, to enforce which the present proceeding is instituted, is not a legal order to which obedience is due under the act to regulate commerce and the amendments thereof, for the reason, among others, that said order is based upon erroneous findings of fact and law stated in the said report of the Commission.

These respondents specify the following errors:

1. The Commission erred in finding that the shipment to the shorter distance points mentioned in the report were made under an arrangement for continuous carriage or shipment within the provisions of the said act to regulate commerce.

2. The Commission erred in finding that the shipments made to the shorter distance points mentioned in the report were made
87 over the same line as the shipments made to the longer distance points mentioned therein.

3. The Commission erred in finding that competition between carriers does not constitute a circumstance or condition within the meaning of the fourth section of the act to regulate commerce.

4. The Commission erred in finding that the competition between markets does not constitute a circumstance or condition to be considered under the provisions of the fourth section of said act.

Wherefore these respondents, having fully answered, pray that the petition herein be dismissed as to them, and that they be hence dismissed with their costs in this behalf wrongfully incurred.

H. L. Bond, Jr.,
Henry Jackson,
Solicitors for Respondents.

District of Columbia:

Reuben Foster, being duly sworn, deposes and says that he is one of the receivers of the Richmond and Danville Railroad Company, and that the matters and facts stated in the foregoing answer are true, as he verily believes.

Reuben Foster.

Sworn to and subscribed before me this 12 day of August, 1893.

[seal of n. p.] Chas. P. Lee, *Notary Public.*

Filing: Filed in clerk's office 14 day of Aug., 1893. O. C. Fuller, clerk.

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89 *Stipulation as to deposition of Lee Trammell, H. H. Fitzpatrick, and S. A. Turnell.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad and Banking Company, et al.
In equity, No. 525.

In the above-entitled cause it is stipulated and agreed by the counsel for the complainant and by counsel for the defendants that the depositions of the following-named witnesses for the complainant, to wit, Lee Trammell, H. H. Fitzpatrick, and S. A. Turnell, of Madison, Georgia, may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that W. R. Mustin,
90 esq., of Madison, Georgia, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for Defendants as of Record.

Filing: Filed in clerk's office 12 day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Interrogatories to Lee Trammell, H. H. Fitzpatrick, and S. A. Turnell.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al.
In equity, No. 525.

Interrogatories filed in the above-entitled cause on behalf of the complainant therein and to be exhibited to Lee Trammell, H. H. Fitzpatrick, and S. A. Turnell, of Madison, Georgia:

Interrogatory No. 1. What is your name and residence and in what occupation or business are you engaged?

Interrogatory No. 2. If you say you reside at Madison, Ga., state how long that place has been your residence and how long you have been engaged in business there and in what business.

Interrogatory No. 3. State whether merchants of Atlanta, Ga., sell goods and do business at Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond

Madison from Atlanta at which Atlanta merchants sell goods or do business, and state how far such points are from or beyond Madison,
91 and whether goods, in order to reach such points from Atlanta, have to be hauled through Madison and over what roads.

Interrogatory No. 5. State whether merchants of Madison attempt to sell goods and do business at such points in territory around and beyond Madison, and whether in doing so they come in competition with merchants of Atlanta.

Interrogatory No. 6. State whether Madison merchants can successfully compete with Atlanta merchants in selling goods and doing business at Madison and in territory around and beyond Madison.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Madison merchants are placed at a disadvantage in this competition with Atlanta merchants, state what the disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this advantage results from a discrimination in rates in favor of Atlanta and against Madison, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination in favor of Atlanta has existed, and what effect, if any, it has had in retarding the growth of Madison.

Interrogatory No. 10. State whether Madison merchants buy their goods from Atlanta or direct from New York and other Eastern cities or other sources of supply, and when goods are brought in New York and other Eastern cities, whether they are shipped to Madison under a through bill of lading, naming a through rate to Madison, and whether goods from New York and other Eastern cities after reaching Charleston are hauled through to Madison without transfer or breakage of bulk in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Madison.

92 Interrogatory No. 12. Do transportation rates or charges enter into and affect the prices at which yourself and other Madison merchants can sell goods to consumers in and around Madison?

Interrogatory No. 13. How would a reduction in the rates on goods of all classes from New York and other Eastern cities to Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 14. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 15. Will a reduction in the rates on all classes of goods from New York and other Eastern cities to Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain, so as to make the rates to those points not higher than the rates from New York and other Eastern cities to Atlanta, increase or diminish the tonnage of traffic, which will be hauled by the roads to Madison, Greensboro, Social Circle,

Covington, Conyers, and Stone Mountain? Give your reasons for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 16. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 17. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 18. Do you know or can you set forth any
93 other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:
Cross-examination waived.

ED. BAXTER,
Solr. for Defts. as of Record.

Answer of Lee Trammell.

INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE GEORGIA Railroad and Banking Co., et al. } In equity. No. 525.

The witness Lee Trammell, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To interrogatory No. 1 he says: My name is Lee Trammell and I reside at Madison, Ga. I am engaged in the dry goods business.

To inty. No. 2 he says: I have lived in Madison, Ga., eleven years, and for the past eight years I have been engaged in the dry goods business in said city.

To inty. No. 3 he says: They do. Merchants of Athens and Milledgeville also sell goods and do business in Madison and in territory around Madison.

To the 4th inty. he says: Atlanta merchants sell goods at Buckhead, seven miles from Madison; at Greensboro, twenty miles from Madison; at Union Point, twenty-seven miles from Madison, and at other points on the Georgia Railroad beyond Madison from Atlanta. These places are on the Georgia Railroad, and goods, in order to reach
94 such points from Atlanta, have to be hauled through Madison over the Georgia Railroad.

To inty. 5th he says: Madison merchants attempt to sell goods and do business at points around and beyond Madison, but owing to high freight rate they are unable to successfully compete with Atlanta merchants.

To inty. 6th he says: They can not successfully compete with Atlanta merchants in selling goods and doing business at Madison, and in territory around and beyond Madison.

To inty. 7th he says: The disadvantage in favor of Atlanta and against Madison results from difference in rate of freight.

To 8th inty. he says: Goods can be shipped from all Eastern and Northern points to Atlanta, and then reshipped to Madison and points around and beyond Madison, at a less rate of freight than Madison have on same class of good shipped from Eastern or Northern points.

The rate of first-class freight from Eastern points through Madison to Atlanta is one dollar and fourteen cents per hundred pounds, but if stopped off at Madison the freight is one dollar and forty-three cents per hundred—the goods reaching Madison over the Georgia Railroad.

Goods can be shipped from all Ohio River points in the West, through Madison via Georgia Railroad to Milledgeville, which is about one hundred miles beyond Madison, at a rate of freight which permits Milledgeville merchants to sell the goods at Madison and points around Madison for less than Madison merchants can deliver goods from Ohio River points at Madison.

To 9th inty. he says: This discrimination has existed ever since I have been at Madison, and it has materially retarded the growth of Madison.

To inty. 10th he says: Madison merchants buy their goods generally direct from New York, and the goods are shipped to Madison under through bill of lading, with through rate named in bill of lading, and after reaching Charleston the goods are hauled through to Madison without transfer or breakage of bulk and in the same cars in which they were originally loaded at Charleston.

95 To 11th inty. he says: Madison has a population of between 2,500 and 3,000, and has fertilizer works making cotton-seed oil, guano, and soap; ice plant, canning factory, variety works, wagon factory, and cotton compress.

To the 12th inty. he says: Transportation rates very materially enter into and affect the prices at which I and other Madison merchants can sell goods to consumers in and around Madison.

To the 13th inty. he says: Lower rates of freight would lower prices of goods, and the merchants of Madison and the places named, with lower freight rate, could sell goods cheaper.

To the 14th inty. he says: Generally more goods are sold when prices are lower than when they are high, and more goods are sold when they are cheap than when they are high. My experience bears me out in this statement.

To the 15th inty. he says: A lower freight rate would allow the merchants of Madison and the places named to sell goods in their own territory, and they would do more business, and necessarily have more goods shipped. A lower freight rate would allow the merchants of the places named to sell goods cheaper, and the lower the prices the more goods are sold generally.

To the 16th inty. he says: In locating business enterprises the freight rate to the locality plays an important part in determining the location. Low freight rates to a locality is calculated to increase the population of the locality and to promote materially the investment of capital there.

To the 17th inty. he says: Rates which discriminate against a locality stagnate business in the locality discriminated against and retard its

growth and progress for the reason that no business enterprise can succeed or be built up where the merchants or manufacturers of the locality can not successfully compete in prices, in their own territory, with outside merchants who sell in their territory, by reason of high freight rates to the particular locality.

96 To 18th inty. he says: Madison merchants are unable to do any business with the country stores in this county, for the reason that Atlanta, Athens, and Milledgeville merchants, by reason of lower freight rates, can and do sell them goods at a profit at the same price that it cost the Madison merchants to deliver the goods at Madison, owing to high rate of freight to Madison. The difference is much greater on groceries and hardware, which are sold at close margin, than on dry goods. I know nothing further.

LEE TRAMMELL.

Answer of H. H. Fitzpatrick.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE GEORGIA Railroad and Banking Co. et al. } In equity, No. 525.

The witness, H. H. Fitzpatrick, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To inty. No. 1 he says: My name is Henry H. Fitzpatrick and my residence is Madison, Ga. I am a merchant, engaged in general farm-supply business.

To inty. 2nd he says: Madison has been my residence for nearly thirty-four years. I have been engaged in general farm-supply business at Madison for eleven years.

To inty. 3rd he says: They do.

To inty. 4th he says: Atlanta merchants sell goods at Buckhead, seven miles from Madison; at Greensboro, twenty miles; at Union Point, twenty-seven miles; at Washington, about seventy miles, and at other points on Georgia Railroad beyond Madison from Atlanta. These places are on the Georgia Railroad, and in order for goods from Atlanta to reach such points they have to be hauled through Madison over the Georgia Railroad.

To inty. 5th he says: They occasionally do, but owing to the high rate of freight they are unable to compete with Atlanta merchants.

97 To inty. 6th he says: They can not.

To inty. 7th he says: The disadvantage against Madison and in favor of Atlanta results from difference in freight rates.

To 8th inty. he says: The freight rate from western points to Atlanta on meat is forty-eight cents per hundred, while to Madison it is sixty-three cents per hundred. On flour the difference in favor of Atlanta is from 18 to 20 cents per barrel, and on corn the difference in favor of Atlanta is 9½ cents per hundred.

To inty. 9th he says: It has existed ever since I have been in business at Madison and it has materially retarded the growth of the city.

To inty. 10th he says: Madison merchants generally buy their goods

direct from New York and other Eastern points; in fact, they buy at least three-fourths of their goods there.

When goods are shipped from New York and other Eastern cities, they are shipped to Madison under a through bill of lading, with rate of freight named therein, and after being loaded from steamer at Charleston they are hauled through to Madison without transfer in the same cars in which they were originally loaded.

To inty. 11th he says: Population about 2,500 or 3,000, estimated. Madison has a guano factory making fertilizer, cotton-seed oil, and soap; canning factory, variety works, ice plant, cotton compress, and some other small enterprises.

To 12th inty. he says: They do.

To inty. 13th he says: A reduction in the rate as inquired about would materially lower prices. Madison merchants could then sell to their customers, and make the same profit they make now, meat at one-eight cent less; flour at 20c. per barrel less; corn at 5c. per bushel less, and oats 3c. per bushel less.

To int. 14th he says: Low prices increase the sale and consumption of goods. More goods are sold when they are cheap than when they are high. When they are high, consumers buy only what they are compelled to have, while when they are cheap the consumer buys liberally.

98

To inty. 15th he says: A reduction in the rates of freight as inquired about in 15th direct inty. will, in my opinion, increase the tonnage of traffic which will be hauled by the roads to the places name thirty-three and one-third per cent.

My reason for this opinion is that with low rate the merchants of Madison and the towns named could compete with Atlanta in their own territory. They would then sell many more goods, at least a third more, and if they sold more they would necessarily have more shipped.

To inty. 16th he says: Low rate to a locality have a marked effect in increasing the population of the locality and inducing the investment of capital. Capital, ordinarily, will not go to a place where freight rate are high. High rates drive away wholesale merchants from Madison, because they can not compete with Atlanta. All mercantile and manufacturing enterprises are, more or less, dependent for success on the rate of freight to the locality.

To the 17th inty. he says: Relatively high rates to a locality, or rates which discriminate against a locality, drive away business and materially retard the progress of the locality. The locality in favor of which the discrimination is made will build up and prosper at the expense of the other.

To 18th inty. he says: There are about twenty country stores in this county, outside of any town or village. By reason of the discrimination in the rate of freight in favor of Atlanta and against Madison these stores buy their goods as cheap, or cheaper, than the merchants of Madison. The Madison merchant can not sell them their goods because they cannot compete with Atlanta, and the country merchants draw from Madison a large part of the trade that legitimately belongs to Madison.

I know nothing further.

H. H. FITZPATRICK.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE GEORGIA RAILROAD AND BANKING CO., et al. } In equity, No. 525.

The witness, S. A. Turnell, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To inty. 1st he says: My name is S. A. Turnell and I reside in Madison, Ga. I am engaged in the dry goods business.

To inty. 2nd he says: I have resided at Madison, Ga., for nearly twenty-five years. Have been in the dry goods business here for about fifteen years.

To inty. 3rd he says: Yes. Atlanta merchants sell goods and do business at the places named, and in territory around said named places.

To 4th inty. he says: Atlanta merchants sell goods and do business at Buckhead, in this country, seven miles beyond Madison from Atlanta; at Greensboro, twenty miles beyond; at Union Point, twenty-seven miles beyond; and at other points on Georgia Railroad beyond Madison. All of these places are on the Georgia Railroad, and goods from Atlanta, in order to reach them, have to be hauled over the Georgia Railroad, through Madison.

To inty. 5th he says: They sometimes try, but owing to high rate of freight they are unable to compete with Atlanta.

To inty. 6th he says: They can not.

To inty. 7th he says: The disadvantage in favor of Atlanta and against Madison results from difference in rate of freight. Owing to this difference Madison merchants can not compete with merchants of
100 Atlanta. To inty. 8th he says: The freight rate on first-class freight from all eastern points to Atlanta is 114c. per hundred, while the rates to Madison is 143c. If the goods are left off at Madison, the freight is 143 cents per hundred, but if carried beyond Madison 68 miles, to Atlanta, the freight is only 114 cents per hundred.

To inty. 9th he says: This discrimination has existed ever since I began business at Madison, and has been the strongest factor in retarding the growth of the city.

To inty. 10th he says: The merchants of Madison buy the larger part of their goods direct from New York and other eastern points. When goods are bought in New York they are shipped through to Madison on through bill of lading naming a through rate to Madison. After reaching Charleston the goods are hauled through to Madison without transfer or breakage of bulk and in the same cars in which they were originally loaded.

To inty. 11th he says: The population of Madison is about 2,500. The principal enterprises are the Ga. Farmers' Oil & Fertilizer Co.; ice plant, cotton compress, variety works, and about forty (40) retail stores.

To inty. 12th he says: They enter into and affect the prices very materially.

To inty. 13th he says: A reduction in rates of freights as inquired about in this inty. would allow the merchants to sell goods cheaper to customers. Such reduction would lower the prices of goods.

To inty. 14th he says: When prices are low more goods are sold or consumed than when prices are high. This is my opinion and experience.

To inty. 15th he says: A reduction in the rates on all classes of goods from New York and other eastern cities to Madison and the towns named so that the rate would not be higher than the Atlanta rate would allow the Madison merchants and the merchants of the places
101 named to sell goods in their own territory. They would necessarily sell more goods and would have more shipped. As it is now Madison merchants are dependent on local retail trade. They can not do any wholesale business because they can not compete with Atlanta.

To inty. 16th he says: Relatively low or preferential rates to a locality promote the investment of capital there, and encourage business enterprises.

To inty. 17th he says: Relatively high rates to a locality drive away capital and business enterprises. No business enterprise can succeed unless it can compete in prices with other merchants who sell in the territory where the enterprise is located.

To inty. 18th he says: Madison merchants, being unable to compete in prices with Atlanta, can not sell goods to the many country stores in this county. These country stores can buy their goods as cheap as the Madison merchants, and as they have no city taxes to pay and their expenses are light, they draw much trade from Madison. If Madison had the same rate as Atlanta her merchants would sell goods to these country stores, and the trade that is now induced away from us would come back.

I know nothing further.

S. A. TURNELL.

I, William R. Mustin, of Madison, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me said witnesses, to wit, Lee Trammell, H. H. Fitzpatrick, and S. A. Turnell, and after having duly sworn them to speak the truth, the whole truth, and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of the said witnesses.

This 22nd day of September, 1897.

W. R. MUSTIN,
Commissioner.

(Indorsed on envelope:) To O. C. Fuller, esq., clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Georgia. Registered No. 106, Madison, Ga. Received Sept. 22,
102 1897. Atlanta, Ga. Received from the hands of the postmaster at Atlanta, Ga., and filed this 23 day of Sept., 1897. O. C. Fuller, clerk.

Stipulation as to depositions of J. H. Aldman, D. M. Aldman, and A. D. Summer.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD & BANKING CO., et al. } In equity, No. 525.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions of the following named witnesses for the complainant, to wit: J. H. Aldman, D. M. Aldman, and A. D. Summers, of Conyers, Georgia, may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that G. W. Gleaton, of Conyers, Georgia, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants.

Interrogatories to J. H. Aldman, D. M. Aldman, and A. D. Summer.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, et al. } In equity, No. 525.

103 Interrogatories in the above entitled cause on behalf of the complainant therein and to be exhibited to J. H. Aldman, D. M. Aldman, and A. D. Summer, of Conyers, Georgia.

Interrogatory No. 1. What is your name and residence, and in what occupation or business are you engaged?

Interrogatory No. 2. If you say you reside at Conyers, Georgia, state how long that place has been your residence, and how long you have been engaged in business there, and in what business.

Interrogatory No. 3. State whether merchants of Atlanta or Macon, Ga., sell goods and do business at Madison, Greensboro, Social Circle, Covington, Conyers and Stone Mountain, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond Conyers from Atlanta, or Macon, at which Atlanta or Macon merchants

sell goods or do business, and state how far such points are from or beyond Conyers and whether goods in order to reach such points from Atlanta or Macon have to be hauled through Conyers, and over what road.

Interrogatory No. 5. State whether merchants of Conyers attempt to sell goods and do business at such points in territory around and beyond Conyers, and whether in doing so they come in competition with merchants of Atlanta or Macon.

Interrogatory No. 6. State whether Conyers merchants can successfully compete with Atlanta or Macon merchants in selling goods and doing business at Conyers and in territory around and beyond Conyers.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Conyers merchants are placed at a disadvantage in this competition with Atlanta or Macon merchants, state what the disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interroga-
104 tory, you say this disadvantage results from a discrimination in rates in favor of Atlanta or Macon and against Conyers, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination in favor of Atlanta or Macon has existed; and what effect, if any, it has had in retarding the growth of Conyers.

Interrogatory No. 10. State whether Conyers merchants buy their goods from Atlanta or Macon or direct from New York and other Eastern cities, or other sources of supply, and when goods are bought in New York or other Eastern cities whether they are shipped to Conyers under a through bill of lading, naming a through rate to Conyers, and whether goods are hauled through from New York and other Eastern cities after reaching Charleston to Conyers without transfer or breakage of bulk and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Conyers.

Interrogatory No. 12. Do transportation rates or charges enter into and affect the prices at which yourself and other Conyers merchants sell goods to consumers in and around Conyers?

Interrogatory No. 13. How would a reduction in the rates on goods of all classes from New York and other Eastern cities to Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain, so as to make the rates to those points not higher than the rates to Atlanta or Macon, affect the prices at which merchants at Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 14. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

105 Interrogatory No. 15. Will a reduction in the rates on all classes of goods from New York and other Eastern cities to Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain,

so as to make the rates to those points not higher than the rates from New York and other Eastern cities to Atlanta or Macon, increase or diminish the tonnage of traffic which will be hauled by the roads to Madison, Greensboro, Social Circle, Covington, Conyers, and Stone Mountain? Give your reasons for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 16. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 17. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 18. Do you know or can you set forth any other matter or thing, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
For Complainant.

Cross-examination:

Cross-examination waived for the present.

ED BAXTER.

Answers of D. M. Almand.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad and Banking Company, et al.
} In Equity, No. 525.

106 By agreement of counsel for both parties in above-stated case, we have caused D. M. Almand, the witness named, to come before us.

The witness D. M. Almand, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To 1st intgy.: My name is D. M. Almand. I reside at Conyers, Georgia. I am engaged in mercantile business.

To 2d intgy.: I have resided in Conyers forty-five years. I have been engaged in the mercantile business in Conyers thirty-five years.

To 3d intgy.: Merchants in Macon and Atlanta sell goods and do business with merchants of Madison, Greensboro, Social Circle, Covington, Conyers, Stone Mountain, and all territory around these points.

To 4th intgy.: Covington is ten miles from Conyers, Social Circle is twenty miles, Madison is forty miles. Goods sold to these places by Atlanta or Macon merchants go through Conyers, over the Georgia Railroad, and the goods to country stores adjacent to Covington, Social Circle, and Madison go over the Georgia Railroad.

To 5th intgy.: Merchants of Conyers do a retail business. None do wholesale or jobbing business. They do not come in competition with Atlanta, Macon merchants, because they do no jobbing business.

To 6th inty.: Conyers merchants can not compete successfully with Atlanta and Macon merchants in selling goods to other points, because of difference in freight.

To 7th intgy.: The disadvantages result from the difference in freight rates.

To 8th intgy.: I know there is a difference in rates in favor of Atlanta and Macon as against Conyers and other points on Georgia Rail-
107 road, but I can not give the schedule of rates nor the difference between the through rates and local.

To 9th intgy. This discrimination has been going on ten or fifteen years. It has the effect of killing all manufacturing enterprises and jobbing houses.

To 10th intgy. Buy some in Atlanta and Macon and direct from New York and other Eastern cities. When goods are bought in New York and other Eastern cities, they are shipped to Conyers under through bill of lading, naming a through rate to Conyers. I do not know whether hauled through from Charleston to Conyers without transfer or not. I do not know whether the bulk is broken, or whether in the same cars in which it was originally loaded, or not.

To 11th intgy. The population of Conyers is about 1,600. The merchants are as follows: J. C. Stevenson, M. H. Plunket, Wood & Hollingsworth, A. D. Summers, W. L. Adair, C. B. Hudson, Gaily Drug Co., Thompson Stewart, J. W. Jones, W. H. Lee, D. M. Almand & Sons, Turner Bros., J. J. Langford, R. W. Tucker, J. H. Aldman & Co., G. A. Lucas, N. T. Street, Lackey, Tilley & Quigg, W. V. Almand & Son, J. A. Dukes, Rockdale Oil & Fertilizer Co., and Union Paper Mills Co.

To 12th intgy. Transportation rates enter into and affect the prices at which I and other merchants in Conyers sell goods to consumers.

To 13th intgy. If we could get the same rate as Atlanta and Macon, we would be able to sell goods to our customers cheaper.

To 14th intgy. Where goods are cheaper there are more of them consumed. My experience is that we sell more goods when they are cheap.

To 15th intgy. A reduction in rates of freight on all classes of goods from New York and Eastern cities to Madison, Greensboro, Social Circle, and other towns mentioned will increase the tonnage of
108 traffic which will be hauled, because more goods will be bought.

To 16th intgy. It would have a tendency to increase the population and induce the investment of capital there, and would probably make such a locality more prosperous.

To 17th intgy. Relatively high rates for freight for any locality would tend to decrease its population, drive away capital, and have a bad influence on the prosperity of that locality.

To 18th inty. Manufacturing enterprises have been started in Conyers which have moved away on account of the difference in freight rates against Conyers. H. D. Terrell, manufacturer of plows, moved to Macon on this account. The Atlanta Paper Bag Factory moved away from Conyers on account of high rates of freights. I am president of

the Union Paper Mills near Conyers, and unless we can get a better rate of freight we will be compelled to shut down our mills.

D. M. ALMAND.

Sworn to and subscribed before me Oct. 1st, 1897.

I, Geo. W. Gleaton, of Conyers, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness named, to wit, D. M. Almand, and, after having duly sworn him to speak the truth, took down his answers to said interrogatories; and that the foregoing four pages contain a full, true, and correct report of the testimony given by D. M. Almand, the said witness.

This Oct. 1st, 1897, at Conyers, Ga.

GEO. W. GLEATON,
Commissioner.

Answers of L. J. Almand.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad and Banking Company, et al. } In equity, No. 525.

109 By agreement of counsel for both parties in above-stated case, we have caused L. J. Almand, the witness named, to come before us,

The witness L. J. Almand, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To 1st inty.: My name is L. J. Almand, of the firm of J. H. Almand & Co. I reside at Conyers, Georgia. I am engaged in mercantile business.

To 2d intgy.: I have resided at Conyers thirty-two years. I have been engaged in the mercantile business in Conyers about nine years.

To 3d intgy.: Merchants in Macon and Atlanta sell goods and do business with merchants of Madison, Greensboro, Social Circle, Covington, Conyers, Stone Mountain, and all territory around these points.

To 4th intgy.: Covington is ten miles from Conyers, Social Circle is twenty miles, Madison is forty miles. Goods sold to these places by Atlanta or Macon merchants go through Conyers over the Georgia Railroad. And the goods to country stores adjacent to Covington, Social Circle, and Madison go over the Georgia Railroad.

To 5th inty.: Merchants of Conyers do a retail business. None do wholesale or jobbing business. They do not come in competition with Atlanta, Macon merchants, because they do no jobbing business.

To 6th intgy.: Conyers merchants can not compete successfully with Atlanta and Macon merchants in selling goods to other points, because of difference in freight.

To 7th intgy.: The disadvantages result from the difference in freight rates.

To 8th intgy.: I know there is a difference in rates in favor of Atlanta

and Macon as against Conyers and other points on Georgia Rail-
110 road, but I can not give the schedule of rates, nor the difference between the through rates and local.

To 9th intgy.: This discrimination has been going on ten or fifteen years. It has the effect of killing all manufacturing enterprises and jobbing houses.

To 10th intgy.: Buy some in Atlanta and Macon, and direct from New York and other Eastern cities. When goods are bought in New York and other Eastern cities, they are shipped to Conyers under through bill of lading, naming a through rate to Conyers. I do not know whether hauled through from Charleston to Conyers without transfer or not. I do not know whether the bulk is broken, or whether in the same cars in which it was originally loaded or not.

To 11th intgy.: The population of Conyers is about 1,600. The merchants are as follows: J. C. Stevenson, M. H. Plunket, Wood & Hollingsworth, A. D. Summers, W. L. Adair, C. B. Hudson, Gaily Drug Co., Thompson Stewart, J. W. Jones, W. H. Lee, D. M. Almand & Sons, Turner Bros., J. J. Langford, R. W. Tucker, J. H. Aldman & Co., G. A. Lucas, N. T. Sweet, Lackey, Tilley & Quigg, W. V. Almand & Son, J. A. Dukes, Rockdale Oil & Fertilizer Co., and Union Paper Mills Co.

To 12th intgy.: Transportation rates enter into and affect the prices at which I and other merchants in Conyers sell goods to consumers.

To 13th intgy.: If we could get the same rate as Atlanta and Macon, we would be able to sell goods to our customers cheaper.

To 14th intgy.: Where goods are cheaper there are more of them consumed. My experience is that we sell more goods when they are cheap.

To 15th intgy.: A reduction in rates of freight on all classes of goods from New York and Eastern cities to Madison, Greensboro, Social Circle, and other towns mentioned will increase the tonnage of traffic which will be hauled, because more goods will be bought.

111 To 16th intgy.: It would have a tendency to increase the population and induce the investment of capital there, and would probably make such a locality more prosperous.

To 17th intgy.: Relatively, high rates of freight for any locality would tend to decrease its population, drive away capital, and have a bad influence on the prosperity of that locality.

To 18th inty.: Manufacturing enterprises have been started in Conyers which have moved away on account of the difference in freight rates against Conyers. H. D. Terrell, manufacturer of plows, moved to Macon on this account.

L. J. ALMAND,
Of the firm of J. H. Almand & Co.

Sworn to and subscribed before me Oct. 1st, 1897.

I, Geo. W. Gleaton, of Conyers, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness named, to wit, L. J. Almand, and after having duly sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories; and that the fore-

going pages contain a full, true, and correct report of the testimony given by L. J. Almand, the said witness.

This Oct. 1st, 1897, at Conyers, Ga.

GEO. W. GLEATON,
Commissioner.

Answers of A. D. Summers.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad and Banking Company, et al. } In equity, No. 525.

By agreement of counsel for both parties in above-stated case we have caused A. D. Summers, the witness named, to come before us.

112 The witness, A. D. Summers, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To 1st intgy.: My name is Allen D. Summers. I reside at Conyers, Georgia. I am engaged in mercantile business.

To 2nd intgy.: I have resided at Conyers twenty years. I have been engaged in the mercantile business in Conyers fifteen years.

To 3rd intgy.: Merchants in Macon and Atlanta sell goods and do business with merchants of Madison, Greensboro, Social Circle, Covington, Conyers, Stone Mountain, and all territory around these points.

To 4th intgy.: Covington is ten miles from Conyers, Social Circle is twenty miles, Madison is forty miles. Goods sold to these places by Atlanta or Macon merchants go through Conyers over the Georgia Railroad, and the goods to country stores adjacent to Covington, Social Circle, and Madison go over the Georgia Railroad.

To 5th intgy.: Merchants of Conyers do a retail business. None do wholesale or jobbing business. They do not come in competition with Atlanta, Macon merchants, because they do no jobbing business.

To 6th intgy.: Conyers merchants can not compete successfully with Atlanta and Macon merchants in selling goods to other points, because of difference in freight.

To 7th intgy.: The disadvantages result from the difference in freight rates.

To 8th intg.: I know there is a difference in rates in favor of Atlanta and Macon as against Conyers and other points on Georgia Railroad, but I can not give the schedule rates, nor the difference between the through rates and local.

113 To 9th intgy.: This discrimination has been going on ten or fifteen years. It has the effect of killing all manufacturing enterprises and jobbing houses.

To 10th intgy.: Buy some in Atlanta and Macon, and direct from New York and other Eastern cities. When goods are bought in New York and other Eastern cities they are shipped to Conyers under through bill of lading, naming a through rate to Conyers. I do not know whether hauled through from Charleston to Conyers without transfer or not. I

do not know whether the bulk is broken or whether in the same cars in which it was originally loaded or not.

To 11th intgy.: The population of Conyers is about 1,600. The merchants are as follows: J. C. Stevenson, M. H. Plunkett, Wood & Hollingsworth, A. D. Summers, W. L. Adair, C. B. Hudson, Gaily Drug Co., Thompson Stewart, J. W. Jones, W. H. Lee, D. M. Almand & Sons, Turner Bros., J. J. Langford, R. W. Tucker, J. H. Aldman & Co., G. A. Lucas, N. S. Street, Lackey, Tilley & Quigg, W. V. Almand & Son, J. A. Dukes, Rockdale Oil & Fertilizer Co., and Union Paper Mills Co.

To 12th intgy.: Transportation rates enter into and affect the prices at which I and other merchants at Conyers sell goods to consumers.

To 13th intgy.: If we could get the same rate as Atlanta and Macon we would be able to sell goods to our customers cheaper.

To 14th intg.: Where goods are cheaper there are more of them consumed. My experience is that we sell more goods when they are cheap.

To 15th intgy.: A reduction in rates of freight on all classes of goods from New York and Eastern cities to Madison, Greensboro, Social Circle, and other towns mentioned will increase the tonnage of traffic which will be hauled, because more goods will be bought.

To 16th intgy.: It would have a tendency to increase the popu-
114 lation and induce the investment of capital there, and would probably make such a locality more prosperous.

To 17th intgy.: Relatively high rates of freight for any locality would tend to decrease its population, drive away capital, and have a bad influence on the prosperity of that locality.

To 18th intg.: Manufacturing enterprises have been started in Conyers which have moved away on account of the difference in freight rates against Conyers. H. D. Terrell, manufacturer of plows, moved to Macon on this account.

ALLEN D. SUMMERS.

Sworn to and subscribed before me Oct. 1st, 1897.

I, Geo. W. Gleaton, of Conyers, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness named, to wit, Allen D. Summers, and after having duly sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing four pages contain a full, true, and correct report of the testimony given by Allen D. Summers, the said witness.

This Oct. 1st, 1897, at Conyers, Ga.

GEO. W. GLEATON,
Commissioner.

[Indorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Georgia.

I certify that I received this package of Geo. W. Gleaton, the commissioner, to be and have forwarded by due course of mail. October 2nd, 1897.

MARY M. MELTON, P. M.,
Conyers, Ga.

Received Oct. 2, 1897, Atlanta, Ga.

Received from the hands of the postmaster at Atlanta, Ga., and filed this 4 day of Oct., 1897.

O. C. FULLER, *Clerk.*

Interrogatories to Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

115 THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, et al. } In equity, No. 525.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Jesse M. Smith, Washington, D. C.

Interrogatory No. 1. What is your name, residence, and occupation?

Interrogatory No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position and what, if any, was your previous position with the Commission and how long you occupied that?

Interrogatory No. 3. In what business were you engaged before entering into the service of the Commission? How long were you so engaged and in what part of the country?

Interrogatory No. 4. Are schedules of rates, fares, and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the Commission, and is it not one of your duties as auditor to examine such tariffs?

Interrogatory No. 5. From your examination of such schedules of rates, fares, and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

Interrogatory No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, state whether or not it is the rule in that territory in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory.

116 Interrogatory No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law, and prior thereto?

Interrogatory No. 8. Does this practice exist to any considerable extent in Eastern or trunk line territory?

Interrogatory No. 9. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, except in cases of competition in transportation to the longer distant point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

Interrogatory No. 10. Under what classification are the rates from New York and other Eastern cities to Augusta, Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta made? What is the minimum carload weight prescribed in that classification?

Interrogatory No. 11. Give a tabular statement showing the class rates that were in force in 1892 and that are now in force from New York and Boston to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and to Atlanta and Augusta, showing the excess of the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain on each class over the rates to Atlanta and to Augusta.

Interrogatory No. 12. Give a tabular statement showing the excess of the class rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain over the class rates to Atlanta and Augusta per minimum carload.

Interrogatory No. 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the par-
117 ties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination.

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Stipulation as to depositions of Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al.
In equity, No. 525.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for the Defendants.

Filing: Filed in clerk's office 27 day of Aug., 1897. O. C. Fuller, clerk; by J. D. Steward, deputy.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al.
In equity, No. 525.

Depositions of Jesse M. Smith, a witness for the complainant in the above-entitled cause.

The said witness, Jesse M. Smith, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

Answer to interrogatory No. 2: I have occupied that position since July 1, 1895; from January 1, 1888, to July 1, 1895, I was assistant auditor of the Commission.

Answer to interrogatory No. 3: I was engaged in railroad work for about fourteen years prior to entering the service of the Commission, most of the time in the general freight department of the Louisville & Nashville Railroad, at Louisville, Ky., and Montgomery, Ala.

Answer to interrogatory No. 4: Common carriers are required to file with the Commission all schedules of rates, fares, and charges applying on interstate traffic. All of such schedules are placed on file in the office of the auditor of the Commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable, all schedules of rates, fares, and charges filed in compliance with section six of the act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the Commission.

119 Answer to interrogatory No. 5: From the large number of tariffs examined since the beginning of my service with the Commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers.

Answer to interrogatory No. 6: I am of the opinion that the practice referred to prevails, as a rule, in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory, though there are, no doubt, some exceptions.

Answer to interrogatory No. 7: To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning of my railroad service. It was in existence in the year 1887, and, as above indicated, prior thereto.

Answer to interrogatory No. 8: This practice does not prevail to any considerable extent in the territory east of the Mississippi River and north of the Ohio and Potomac rivers.

Answer to interrogatory No. 9: I have no personal knowledge of any case where the greater charge for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer distance point. I believe the lower charge to the longer distance point has, in practically all cases, been made on the ground of competition in transportation to such longer distance point, either direct competition in transportation from and to the same points or competition with carriers operating from other markets to same point of destination.

Answer to interrogatory No. 10: The rates from New York and other Eastern cities to Augusta, Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta, Ga., are subject to the southern freight classification. This classification provides that unless otherwise specified in the classification the minimum carload weight of all articles loaded in cars 36 feet in length or less shall be 24,000 pounds, or twelve tons when the rate applies per ton, net or gross. For cars over 36 feet in length the minimum carload weights are provided in proportion to length of the car. Special minimum carload weights are provided in the classification for quite a large number of articles, the lowest being 10,000 pounds.

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Answer to interrogatory No. 11: The class rates in force in 1892, also the present rates, from New York and Boston to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, Atlanta, and Augusta, Ga., are shown in the following table:

(Ans. to int. No. 11.)

Class rates from New York, N. Y., and Boston, Mass., to points named below.

[In cents per hundred pounds.]

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	Per bbl. H	Per bbl. F
Greensboro, Ga.:													
1892	137	118	102	87	69	54	45	59	42½	41	65	83	82½
1897	137	118	102	87	69	54	45	59	43	41	65	83	82½
Madison, Ga.:													
1892	143	123	107	89	71	56	47	61	43	42	67	85	84
1897	144	123	107	89	71	56	47	61	44	42	67	85	84
Social Circle, Ga.:													
1892	144	125	109	90	72	57	48	61	43½	42½	68	86	85
1897	144	125	109	90	72	57	48	61	45	43	68	86	85
Covington, Ga.:													
1892	141	122	108	93	76	61	48	60	48	46½	74	88	94
1897	141	122	108	91	73	58	48	60	45	43	69	87	86
Conyers, Ga.:													
1892	138	119	105	90	74	60	47	59	47½	46	72	85	93
1897	138	119	105	90	74	59	47	59	45	44	70	85	87
Stone Mountain, Ga.:													
1892	132	114	101	85	71	58	45	57	46	44½	69	80	90½
1897	132	114	101	85	71	58	45	57	46	44	69	80	90
Atlanta, Ga.:													
1892	114	98	86	73	60	49	36	48	40	39	58	68	78
1897	114	98	86	73	60	49	36	48	40	39	58	68	78
Augusta, Ga.:													
1892	96	81	70	58	47	37	28	42	31½	31	43	54	61
1897	96	81	70	58	47	37	28	42	32	31	43	54	61

Ans. to int. No. 11: The rates from New York and Boston to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are higher than the rates to Atlanta, as follows:

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	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	23	20	16	14	9	5	9	11	3	2	7	15	4½
Madison	30	25	21	16	11	7	11	13	5	3	9	17	6
Social Circle	30	27	23	17	12	8	12	13	5	4	10	18	7
Covington	27	24	22	18	13	9	12	12	5	4	11	19	8
Conyers	24	21	19	17	14	10	11	11	6	5	12	17	9
Stone Mountain	18	16	15	12	11	9	9	9	6	5	11	12	12

The rates from New York and Boston to same points are higher than the rates to Augusta, as follows:

Greensboro	41	37	32	29	22	17	17	17	11	10	22	29	21½
Madison	48	42	37	31	24	19	19	19	11	11	24	31	23
Social Circle	48	44	39	32	25	20	20	19	13	12	25	32	24
Covington	45	41	38	33	26	21	20	18	13	12	26	33	25
Conyers	42	38	35	32	27	22	19	17	13	13	27	31	26
Stone Mountain	36	33	31	27	24	21	17	15	14	13	26	26	29

Answer to interrogatory No. 12: The excess of the rates in the first six classes to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain over the rates on same classes to Atlanta, in dollars, per carload of 24,000 pounds, is as follows:

	Classes.					
	1	2	3	4	5	6
Greensboro	$55.20	48.00	38.40	33.60	21.60	12.00
Madison	72.00	60.00	50.40	38.40	26.40	16.80
Social Circle	72.00	64.80	55.20	40.80	28.80	19.20
Covington	64.80	57.60	52.80	43.20	31.20	21.60
Conyers	57.60	50.40	45.60	40.80	33.60	24.00
Stone Mountain	43.20	38.40	36.00	28.80	26.40	21.60

122 The excess of the rates on the first six classes to above-named points, over the rates on same classes to Augusta, in dollars and cents, per carload, of 24,000 pounds, is as follows:

	Classes.					
	1	2	3	4	5	6
Greensboro	$98.40	88.80	76.80	69.60	52.80	40.80
Madison	115.20	100.80	88.80	74.40	57.60	45.60
Social Circle	115.20	105.60	93.60	76.80	60.00	48.00
Covington	108.00	98.40	91.20	72.20	62.40	50.40
Conyers	100.80	91.20	84.00	76.80	64.80	52.80
Stone Mountain	86.40	79.20	74.40	64.80	57.60	50.40

Answer to interrogatory No. 13: I know of nothing further that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that is material to the subject of this examination.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness Jesse M. Smith, and, after having duly sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witness. This the 26th day of August, 1897.

EUGENE L. GADDESS,
Commissioner.

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Registered August 26, 1897, Washington, D. C., Station C, No. 2093. Atlanta, Ga., received by due course of mails this 28 day of Aug., 1897. Amos Fox, P. M.

Received this package from the hands of Amos Fox, P. M., at Atlanta, Ga., and filed Aug. 28, 1897.

O. C. FULLER, *Clerk.*
By GEO. S. BARNARD, *Deputy Clerk.*

123 *Interrogatories to Allen Fort.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad and Banking Company, et al. } In equity, No. 525.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Allen Fort.

Interrogatory No. 1. What is your name and residence, and what position, if any, do you hold under the State of Georgia?

Interrogatory No. 2. How long have you held such position? Have your duties as a member of the railroad commission of Georgia required you to study and made you familiar with the railroad situation in that State? Had your attention been called to the transportation question prior to your becoming a member of the Georgia railroad commission; and if so, how and for how long a time?

Interrogatory No. 3. Were the rates in force in 1892, and now in force, from Atlanta, Georgia, to the following stations on the Georgia Railroad between Augusta and Atlanta, to wit, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, established by the railroad commission of Georgia? Were the rates from Augusta in force in 1892, and now in force, to those stations established by the railroad commission of Georgia?

Interrogatory No. 4. Name the rates in force in 1892, and now in force, from Atlanta to those stations. Name the rates in force in 1892, and now in force, from Augusta to those stations.

Interrogatory No. 5. In establishing the rates named in the preceding interrogatory, did the railroad commission of Georgia take into consideration the fact that the expense to the carrier of the service of carriage on local hauls in less than carload lots is greater per ton per mile than on long through hauls?

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Interrogatory No. 6. Has the railroad commission of Georgia any authority, or does it attempt to exercise any authority, in establishing the through rates on interstate commerce or any proportions of such rates?

Interrogatory No. 7. Is it your opinion that the prosperity of a road is promoted more by a system of rates which builds up business at local stations along its entire line, or by a system which discriminates against such local stations and tends to build up business at widely separated trade centers alone?

Interrogatory No. 8. Have the effects of the former or latter system of rate making referred to in the preceding interrogatory come under your observation on any roads in the State of Georgia or elsewhere? And if so, state fully what those effects were.

Interrogatory No. 9. Are the geographical positions of Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and the character of the territory by which they are surrounded, such that they are capable of no further growth? What effect, if any, would the reduction of the rates from New York and other Eastern cities to those points so as to make their rates not higher than the rates to Atlanta have on the prosperity and growth of those points?

Interrogatory No. 10. Will a reduction in the rates on all classes of goods from New York and other Eastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, so as to make their rates not higher that the rates for the haul through those points to Atlanta, , in your opinion increase or diminish the tonnage of traffic which will be hauled by the roads to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

Interrogatory No. 11. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and in inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

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Interrogatory No. 12. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 13. State whether or not Atlanta or Augusta ..... merchants compete for business or sell goods in the territory adjacent to and surrounding Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

Interrogatory No. 14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Stipulation as to deposition of Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al. } In equity, No. 525.

In the above-entitled cause it is stipulated and agreed, by counsel for the complainant and by counsel for the defendants, that the deposition of the following-named witness for the complainant, to wit, Allen Fort, of Atlanta, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency.

126 All formal objections are waived. It is further stipulated and agreed that J. D. Massey, of Atlanta, Ga., may act as a commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

ED. BAXTER,
Counsel for the Defendants.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

Filing: Filed in clerk's office 27 day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Answers of Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al. } In equity, No. 525.

The witness, Allen Fort, having been first by me duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To interrogatory No. 1, witness answering says: That his name is Allen Fort; his residence at Americus, Ga.; that he is one of the railroad commissioners of Georgia; that he has held said position for about six years.

To interrogatory No. 2, witness answering says: That he has been railroad commissioner of Georgia since October 15th, 1891; that his duties as such railroad commissioner require him to study and become familiar with the railroad situation in Georgia; that prior to his accession to the commission he had given considerable thought to the transportation question; that as a member of the Georgia legislature during the years 1877, 1878, 1879, and 1880, it became his duty to investigate the

subject in order that he might intelligently vote on pending legislation organizing the railroad commission of Georgia and otherwise affecting railroad transportation in Georgia.

To interrogatory No. 3, witness answering says: The authorized rates in force in 1892, and rates now in force, from Atlanta, Georgia, to
127 Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and rates in force in 1892, and now in force, from Augusta to those stations were established by the railroad commission of Georgia.

To interrogatory No. 4, witness answering says: That the authorized rates in force from Atlanta and from Augusta to those stations in 1892 may be found on pages 114 and 115, in connection with pages 137 and 138 of the Twentieth Report of the Railroad Commission of Georgia, copy of which is made a part of this answer. The authorized rates now in force from Augusta and from Atlanta to the stations named will be found also in said report by reference to the pages named, said Georgia Railroad taking standard tariff rates, which remain unchanged.

To interrogatory No. 5, witness answering says: They did.

To interrogatory No. 6, witnesss answering says: They have not and do not.

To interrogatory No. 7, witness answering says: In my opinion the prosperity of the roads is greatly promoted by a system of rates which build up business at local stations along their entire lines, and that their prosperity is greatly injured by a system which discriminates against local stations and tends to build up business at widely separated "trade centers" alone. At the local stations, where the roads get the entire business by granting just rates, they would increase their tonnage from these stations, thereby securing an improved permanent business, not competitive. Such a course would foster friendly relations between the people and the roads and in a number of ways benefit the roads and promote their prosperity.

To interrogatory No. 8, witness answering says: I have observed the effects of rate-making systems which build up business at local stations, and have found that the roads so doing were uniformly more prosperous and their business more reliable, while, on the other hand, roads pursuing the opposite policy of discriminating against their noncompetitive stations have not been prosperous. This kind of oppression has promoted the construction of competing lines, often where the legitimate trade did not warrant it.

To interrogatory No. 9, witness answering says: The geograph-
128 ical positions of Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and the territory by which they are surrounded, are such that they are capable of further growth; and if rates from New York and other Eastern cities were not higher to those points than rates from New York and other Eastern cities to Atlanta, in my opinion their prosperity and growth would be promoted.

To interrogatory No. 10, witness answering says: In my opinion a reduction in rates from New York and other Eastern cities to those stations, so as to make said rates not higher than rates charged for the haul through those points to Atlanta, would increase the tonnage of traffic hauled by the roads to said points.

To interrogatory No. 11, witness answering says: Relatively low and preferential rates to a particular locality, if such rates are stable, would tend to increase the population of such locality and induce the investment of capital there, and would promote the prosperity of such locality. It would promote manufacturing, cause jobbing houses to be established, and increase the trade of such locality by extending its territory.

To interrogatory No. 12, witness answering says: Relatively high rates to a locality which discriminates against it would have the opposite effect from that stated in the foregoing answer. The margin of profit is so small now in commercial transactions that a discriminating rate against a locality makes manufacturing and jobbing unprofitable; and a locality so discriminated against can not hold the trade in its own legitimate territory, but more favored localities secure the trade and are built up at the expense of the less favored.

To interrogatory No. 13, witness answering says: I presume that Atlanta and Augusta merchants do compete for business and sell goods in the territory adjacent to and surrounding said stations; to what extent I am unable to say.

To interrogatory No. 14, witness answering says: Nothing else of benefit to the parties at issue in this case, or either of them, material to the subject-matter of this examination, occurs to me at this time.

ALLEN FORT, *Deponent.*

I, J. D. Massey, of Atlanta, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I
129 called before me the witness, to wit, Allen Fort, and after having first sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witness. I do certify further that the Twentieth Report of the Railroad Commission of Georgia, herein inclosed, is the same referred to by witness aforesaid, and by him made a part of his answer, as therein set out.

This 29th day of September, 1897.

J. D. MASSEY, *Commissioner.*

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of the U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Received of J. D. Massey, com'r, this package, this 30 day of September, 1897.

O. C. FULLER, *Clerk.*

130 [Extracts from 20th report railroad commission of Georgia.]

Standard freight tariff—Classes.

[Per 100 pounds.]

Distance.	1	2	3	4	5	6	A	B	C	D	E	Per bbl. F	Per 100 lbs. G	Per 100 lbs. H
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	5	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5½	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	6	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6½	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	30	27	25	22	18	13	13	13	8½	8	18	17½	7	22
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	45	40	35	30	23	18	18	18	11½	11	23	23	8½	30
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	60	50	45	35	28	23	23	23	14	13	28	28	9	35
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	30	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

131 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes—Continued.

[Per 100 pounds.]

Distance.	1	2	3	4	5	6	A	B	C	D	E	Per bbl. F	Per 100 lbs. G	Per 100 lbs. H
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	70	60	50	40	32	27	27	27	16	15½	32	33	9½	40
210	71	62	51	41	33	28	28	28	17	16	33	34	9½	41
220	72	64	52	42	33	28	28	28	17	16	33	34	10	42
230	73	66	53	43	34	29	29	29	18	17	34	36	10½	43
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	44
250	75	70	55	45	35	30	30	30	19	18	35	38	10½	45
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	46
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	46
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	47
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	47
300	80	73	58	48	38	33	33	33	21	19	38	42	11	48
310	81	73	58	48	38	33	33	33	21	19	38	42	11	48
320	82	74	59	49	39	34	34	34	21	20	39	42	11	49
330	83	74	59	49	39	34	34	34	22	20	39	44	11	49
340	84	74	59	49	39	34	34	34	22	20	39	44	11	49
350	85	75	60	50	40	35	35	35	23	21	40	46	11	50
360	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
370	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
380	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
390	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
400	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
410	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
420	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
430	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
440	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
450	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
460	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
470	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
480	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
490	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
500	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
510	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
520	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
530	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
540	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
550	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
560	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
570	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
580	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
590	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
600	85	75	60	50	40	35	35	35	23	21	40	46	11½	50

132 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J	K	L	M	N	O	P	R
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.00	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6½	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7½	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**9**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	23.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	22
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	23
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**24**
310	46	17	3.05	3.10	37.00	26.00	24.00	23
320	47	17	3.05	3.20	38.00	26.00	24.00	24
330	48	17	3.15	3.30	38.50	27.00	25.00	24
340	49	17	3.15	3.40	39.00	27.00	25.00	24
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	26
390	54	18	3.41	3.60	42.00	29.00	27.00	26
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**26**

133 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—classes—Continued.

Distance.	Per 100 pounds.		Per ton.		Per car load.			Per 100 lbs.
	J	K	L	M	N	O	P	R
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
410	56	19	3.54	3.70	44.00	31.00	29.00	28
420	57	19	3.54	3.70	44.00	31.00	29.00	28
430	58	19	3.54	3.70	44.00	31.00	29.00	28
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

[Extracts from 20th Report Railroad Commission of Georgia—Continued.]

GEORGIA R. R.

Passenger—Class A—(Three cents per mile).
Freight—To all classes apply standard tariff.

Distance table.

	0
Augusta	5
Wheless	10
Belair	15
Grovetown	16
Forest	21
Berzelia	25
Harlem	26
Saw Dust	29
Dearing	33
Bonesville	37
Thomson	43
Mesena	47
Camak	51
Warrenton	60
Mayfield	67
Culverton	71
Sparta	79
Devereaux	83
Carrs	93
Milledgeville	101
Browns	106
Haddocks	111
James	116
134 Roberts	125
Macon	50
Norwood	58
Barnett	62
Raytown	68
Ficklin	76
Washington	64
Crawfordsville	70
Robinsons	76
Union Point	81
Woodville	83
Bairdstown	89
Maxeys	92
Antioch	98
Lexington	108
Winterville	116
Athens	83
Greensboro	90
Oconee	96
Buckhead	103
Madison	

Dorsey 107
Rutledge 111
Social Circle 119
Alcovy 123
Covington 130
Conyers 140
Lithonia 146
Redan 150
Stone Mountain 153
Clarkson 160
Decatur 165
Atlanta 171

GAINESVILLE, JEFFERSON & SOUTHERN R. R.

Passenger—Class A—(Three cents per mile).
Freight—
Cotton—Class J.
Lumber—Class P.
Add twenty-five (25) per cent to all other classes except C, D and F.

Distance table.

Gainesville .....
Candler .....
135 Florence 1
Pendergrass 1
Jefferson 2
Hoschton 1
Mulberry 2
Jug Tavern 2
Bethlehem 3
Camps 3
Monroe 4
Gresham 4
Social Circle 5

GEORGIA MIDLAND & GULF R. R.

Passenger—Class A—(Three cents per mile).
Freight—
To Classes 1, 2, 3, 4, 5, 6, A, E, H, and R add twenty-five (25) per cent.
To all other classes apply standard tariff.

Distance table.

Columbus, Ga .....
Flat Rock 1
Ellersville 1
Waverly Hall 2
Mulberry 2
Shiloh 3

Nebula 38
Warm Springs 42
Woodbury 52
Jenkinsville 57
Williamsville 60
Concord 64
Stearnsville 72
Griffin 80
Pomona 89
McDonough 97

136 In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
versus
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al.
} In equity, at Atlanta. No. 525.

Frank Lyon, stenographer, 1317 F st. NW., Washington, D. C.

Received by express; filed Aug. 27, 1897. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad & Banking Company, et al.
} In equity, at Atlanta, Ga. No. 525.

In this case it is stipulated and agreed by counsel for complainant and counsel for defendants that Frank Lyon, stenographer, shall act as special examiner, with all the powers of such, to take the depositions of such witnesses in this case as may be produced before him by defendants.

It is further stipulated and agreed that he shall take the testimony of such witnesses in shorthand and afterwards reduce the same to typewriting, and certify that his report of the testimony is full, true, and correct. The signatures of the witnesses to their testimony, and all formal caption and certificate are expressly waived.

June 22nd, 1897.

(Signed)

L. A. SHAVER,
Counsel for Complainant.
ED. BAXTER,
Counsel for Defendants.

137 INDEX.

Name.	Direct.	Cross.	Re-d.	Re-c.	Re-re-d.
Biles, G. P.	233	241	254	255	256
Brown, J. M.	149	159			
Compton, C. B.	79	96			
Culp, J. M.	51	61	77		
Davant, T. S.	32	39	50		
Hillyer, Carlton	107	124	137		
Knok, G. R.	206	221	236		
Lutz, R. E.	166	177	186		
Thompson, J. R.	141	143	146	147	147
Van den Burg, Y.	1	13	28	30	
Winburn, W. A.	187	193	203	204	204

Exhibits.

Exhibit No. ½. Offered by J. M. Culp, p. 78.

Articles of agreement of the Southeastern Freight Association.

Exhibit No. 1. Offered by Carlton Hillyer, p. 108.

Statement showing the relationship between the through and local freight business of the Georgia Railroad Company for the fiscal year ending June 30th, 1891.

Exhibit No. 2. Offered by Carlton Hillyer, p. 109.

Statement showing income and expenses of the Georgia Railroad from the beginning of the lease of said road April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 3. Offered by Carlton Hillyer, p. 110.

Statement showing the loss sustained by the lessees of the Georgia Railroad from the operations of said railroad from the beginning of the lease April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 4. Offered by Carlton Hillyer, p. 111.

Statement showing the relationship between certain movements of through and local freights to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894.

138 Exhib't No. 5. Offered by Carlton Hillyer, p. 115.

Statement showing the relationship between through and local freights of the Georgia Railroad Company, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894.

Exhibit No. 6. Offered by Carlton Hillyer, p. 117.

Statement showing the percentage of first-class freights as compared with total freights in certain movements of freights to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894.

Exhibit No. 7. Offered by Carlton Hillyer, p. 120.

Fixed and obligatory charges. Statement showing the amount of taxes paid by the Georgia Railroad from the beginning of the lease April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 8. Offered by Carlton Hillyer, p. 120.

Fixed and obligatory charges. Statement showing the interest on bonds and other charges paid by the Ga. R. R. on account of the G. J. & S. R. R. and the U. P. and W. P. R. R. from the beginning of the

lease April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 9. Offered by Carlton Hillyer, p. 121.

Statement showing amounts expended by Ga. R. R. on improvements in road and equipment from beginning of lease April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 10. Offered by Carlton Hillyer, p. 122.

Statement showing total Ga. R. R. freight revenue and mile tonnage of freight earning revenue carried by the Ga. R. R. from the beginning of the lease April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 11. Filed by Carlton Hillyer, p. 122.

139 Statement showing yearly averages of revenue, expenses, tons, trains, and miles for Georgia R. R. freight business, as per reports to the Int. Com. Com., from the beginning of said reports in 1888 to the close of the fiscal year ended June 30th, 1896.

Exhibit No. 12. Filed by J. R. Thompson, p. 142.

Statement of tonnage from the Eastern seaboard and interior points in New England, N. Y., Penn., Md., Del., and W. Va. to Atlanta, Ga., during the year ended March 31st, 1893.

Exhibit No. 13. Filed by J. R. Thompson, p. 142.

Classified statement of tonnage from points on and beyond the Ohio and Miss. rivers, and from and via Lexington, Ky., and from Nashville, Tenn., etc., etc., to Atlanta, Ga., during the year ended March 31, 1893.

Exhibit No. 14. Offered by R. E. Lutz, p. 169.

Memorandum of rates and distances from New York to stations on the A. S. R. R., the W. & T., and the B. & W. R. R.

Case No. 41.

FORT MONROE, VA., *June 22nd, 1897.*

Y. VAN DEN BURG, a witness called by and on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. Y. van den Burg; 41 years; reside in Louisville, Ky.; traffic manager of the Louisville & Nashville Railroad.

2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Since 1880.

3. Q. In this case the Interstate Commerce Commission ordered the defendant to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain more than to Atlanta. The rates from New York,

140 Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and

Atlanta were, as shown by the report and opinion of the Commission in 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, so as to make up for any loss of revenue that would otherwise result. Give your reasons for any opinion you may express.

A. Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain simply supply local consumption or demand at the points proper and within a limited territory adjacent. The reductions in the rates would not increase the consumption. There would be no increase of the traffic to compensate the carriers for the reduction in the revenue to any extent. In saying this I have in mind competing lines to points on other lines opposite the Georgia Railroad points mentioned, and which points compete with these Georgia Railroad points in supplying local consumption in the territory situated between their line and the Georgia road would of necessity revise their rates in line with those that may be made to the Georgia Railroad points.

4. Q. State whether said rates from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I regard the rates from New York and other Eastern cities
141 to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain just and reasonable. The rates are made upon the lowest obtainable combination, Atlanta or Augusta governing, as the case may be, as the base point. In other words, in the adjustment of totals the local points are given the benefit of whatever competition may compel the existing rates to Augusta and Atlanta with the rates fixed by the Georgia railroad commission as the maximum out, and which latter are lower than are made in other sections of country for the same service and lower than can be obtained by any other means of transportation.

5. Q. State what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, &c., in the transportation to Atlanta, Ga., for freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F classes:

A. The following lines actually competed in 1892 and do now compete to Atlanta on all classes of freight:

Direct steamers of the Ocean Steamship Co. to Savannah. The Merchants and Miners' Transportation Company's direct steamers to Norfolk; the various lines of steamers and rail lines from Boston to New York connecting with the direct steamer lines from that port to

Norfolk, Portsmouth, Charleston, Savannah, and Brunswick, in connection with the rail lines from Norfolk, Portsmouth, Charleston, Savannah, and Brunswick. The rail lines and the various steamship lines from Boston to New York in connection with the Pennsylvania Railroad and Jersey Central Railroad from New York via Alexandria, Norfolk, Harrisburg, Hagerstown, Shenandoah Junction, and rail lines thence.

From New York: The Ocean Steamship Co. to Savannah; Clyde line to Charleston; Mallory line to Brunswick; Old Dominion Steamship Co. to Norfolk and Portsmouth in connection with the rail lines from Norfolk, Portsmouth, Charleston, Savannah, and Brunswick; and the following all-rail routes: The Pennsylvania Railroad via Alexandria, Harrisburg, and Hagerstown, the various rail lines thence; the Jersey Central in connection with the Reading road via Harrisburg; the Jersey Central in connection with the Baltimore & Ohio via Shenandoah Junction, in connection with the rail routes from Harrisburg and Shenandoah Junction.

From Philadelphia: The Ocean Steamship Co. to Savannah; the Clyde Steamship Co. to Charleston in connection with the rail routes from Savannah and Charleston; the Pennsylvania Railroad via Alexandria, Harrisburg, and Hagerstown, Norfolk in connection with
142 the rail routes from Alexandria, Harrisburg, Hagerstown, and Norfolk; the B. & O. via Shenandoah Junction in connection with the rail lines from that junction.

From Baltimore: The Bay Line of steamers to Norfolk and Portsmouth, Merchants & Miners' Transportation Co. to Savannah, in connection with the rail lines from Norfolk, Portsmouth, and Savannah. The Pennsylvania Railroad via Alexandria, Harrisburg, Hagerstown, and Norfolk and via Richmond with the Richmond, Frederick and Potomac Railroad in connection with the rail lines from Alexandria, Hagerstown, Harrisburg, Norfolk, and Richmond.

In addition to the regular steamer lines already enumerated from Boston, New York, Philadelphia, and Baltimore there are at all times numerous sailing vessels from Boston, New York, Philadelphia, and Baltimore to South Atlantic ports.

6. Q. State what lines actually and actively competed in 1892 and now compete from the Ohio River points and sections of the country other than New York, Philadelphia, &c., in the transportation to Atlanta of freight classified as classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

The following lines actually and actively compete from the Ohio River points as enumerated for the transportation of all classes of freight and commodities from Atlanta to Cincinnati:

Cincinnati, New Orleans & Texas Pacific Railroad Co. via four different routes.

Louisville & Nashville Railroad Company via five different routes.

Baltimore & Ohio Southwestern Railroad Co. via five different routes.

From Louisville: Louisville & Nashville Railroad Co. via three different routes. Southern Railway via two different routes. Illinois Central via five different routes.

From Illinois, Evansville, and Henderson: Louisville & Nashville Railroad Co. via three different routes. Ohio Valley in connection with Illinois Central via five different routes.

From Paducah: Nashville, Chattanooga & St. Louis Railway Co. via three different routes. Illinois Central via five different routes.

143 From Cairo: Nashville, Chattanooga & St. Louis Railway Co., via three different routes; Illinois Central, via six different routes; Mobile & Ohio Railroad Co., via eight different routes.

As to the lines actually and actively competing to Atlanta, on all classes and commodities from sections other than Ohio River crossings, they are too numerous to specify; however—

The Baltimore & Ohio Southwestern Railroad Co.,
Cincinnati & Muskingum Railroad Co.,
Cincinnati, Hamilton & Dayton Railroad Co.,
Cincinnati, Jackson & Mackinaw R. R. Co.,
Cincinnati, Lebanon & Northern,
Cincinnati Northwestern Railroad Co.,
Cincinnati, Portsmouth & Virginia Railroad Co.,
Cleveland, Cincinnati, Chicago & St. Louis Railroad Co.,
Erie Railroad Co.,

And the Pennsylvania Railroad Co., are terminal lines at Cincinnati, reaching that point from north, east, or west.

The Chicago, Indianapolis & Louisville Railroad Co.,
Baltimore & Ohio Southwestern Railroad Co.,
Cleveland, Cincinnati, Chicago & St. Louis Railroad Co.,
Pennsylvania Railroad Co.,
Louisville, Evansville & St. Louis Railroad Co.,

Louisville, Henderson & St. Louis Railroad Co., are terminal lines at Louisville, reaching that point from the north, east, or west.

The Louisville & Nashville R. R., Evansville & Terre Haute,
Louisville, Evansville & St. Louis Railroad Co.,

Peoria, Decatur & Evansville Railroad Co., are terminal lines at Evansville, with a bridge transfer at Henderson, reaching those points from the north or west.

The Illinois Central is a terminal line at Paducah from the north.

The Cleveland, Cincinnati, Chicago & St. Louis Railroad Co.,
Illinois Central Railroad Co.,
Mobile & Ohio Railroad Co.,
St. Louis, Iron Mountain & Southern Railroad Co., and

The St. Louis Southwestern Railroad Co., are terminal lines at Cairo, reaching that point from the north and west.

All these lines, with terminal at Cincinnati, Louisville, Evansville, Henderson, Paducah, and Cairo compete in connection with lines leading south from these Ohio River crossings for all Atlanta traffic

144 originating on their lines or through their connections in territory east and north of them, and west of them as far as the Pacific coast.

7. Q. State whether or not the Louisville & Nashville Railroad Company and its connections actually and actively compete for the carriage of freight of said various classes to Atlanta; and, if so, from what cities.

A. The Louisville and Nashville Railroad and its connections actually and actively compete in the carriage of freight of the various classes to Atlanta from all cities and territories in the last preceding answers.

7½. Q. Does your railroad or its connections have agents at said cities to solicit said freight to Atlanta?

A. The Louisville & Nashville Railroad or its connections have agents in the cities in the territory mentioned to solicit freight to Atlanta.

8. Q. Does your railroad or its connections advertise at said cities for the transportation of said freight to Atlanta?

A. The Louisville & Nashville and its connections, by means of tariffs and other publications, advertise for the transportation of freight to Atlanta from all the cities in the territory already described.

9. Q. State whether the rates on freight of the various classes from New York, Philadelphia, &c., to Atlanta are controlled to any, and if so, to what, extent by competition.

A. The rates of freight on the various classes from New York, &c., to Atlanta are wholly controlled by competition.

10. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. The rates of freight of the various classes from New York to Atlanta are wholly controlled by competition between the numerous carriers, as previously enumerated, and that competition is especially aggravated by the coastwise competition of steam and sail from the North Atlantic seaboard to the South Atlantic coast points.

11. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain as there is at Atlanta.

A. There is no such competition at Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain as at Atlanta and Augusta, but the competition that compelled existing rates to Augusta and Atlanta is recognized in fixing rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and so far east as the car-

145 riage up to Atlanta and Augusta is concerned, traffic to these points is as competitive as if destined to Atlanta and Augusta proper.

12. Q. Were the Clyde Steamship Company and what was formerly known as the South Carolina Railway Company and the Georgia Railroad and Banking Company and the Louisville & Nashville Railroad Company and the Central Railroad and Banking Company of Georgia under any common control or management in 1892, or have they ever been since that time?

A. The Clyde Steamship Company and what was formerly known as the South Carolina Railway Company and the Georgia Railroad and Banking Company, and the Louisville & Nashville Railroad Company and the Central Railroad and Banking Company of Georgia were not in 1892 nor have they been since under any common control or management.

13. Q. I believe the Central Railroad and Banking Company and the Louisville & Nashville Railroad Company were coassignees of the lease of the Georgia Railroad, were they not?

A. They were in 1892, but I understand they are not now.

14. Q. State whether the number of tons carried one mile or the num-

ber of tons carried of freight-earning revenue or the average receipts per ton per mile or the estimated cost of carrying one ton one mile can be used either separately or jointly as the standard in railroad rate making, and state your reasons for it.

A. The items cannot be used as a standard for railroad rate making in fixing an adjustment of rates between any two or more points. Rates have to be made on all classes of freight so as to cover anything that might be offered for transportation, and not knowing the tonnage that will move under each class or the aggregate tonnage that will be moved under all classes or the percentage the aggregate tonnage stands to the total tonnage of the road, it is impossible to consider the rate per ton per mile or the average receipts per ton per mile in fixing rates between any two or more points; and, independent of this, competition compels the carrier frequently to fix rates without regard to any one or more of the specific items of your inquiry.

15. Q. Explain the basis of making rates from New York, Philadelphia, &c., to Atlanta. Are the rates fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. In making the rates from New York and Philadelphia to Atlanta, the coastwise rates by steam and sailing vessels from these cities to South Atlantic coastwise points, Charleston and Savannah and Brunswick, added to the rates from those ports fixed by the Georgia railroad commission are a controlling factor.

146 Cross-examination by Mr. SHAVER:

1. Q. You have stated in substance in your direct examination that certain-named reductions in rates from New York via the Ocean Steamship Company to Charleston, and thence through Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, would not have the effect of increasing traffic to those points, did you not?

A. Yes, sir.

2. Q. As a reason for this you stated it would not increase consumption?

A. Yes, sir.

3. Q. Do not cheap prices increase the consumption of articles of merchandise?

A. These points simply supply a local consumption and the reduction in rates would not increase the movement of meats or coffee or calicoes or anything of that sort.

4. Q. Do not reductions in rates enable merchants to sell the goods cheaper?

A. No, sir; reducing the rates from these Eastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain to the same as the rates from the Eastern cities to Atlanta would not enable the merchants at these points to sell their goods any cheaper than they do now. For instance, it would make a reduction of thirty cents on first-class from New York to Greensboro, and even if the merchants might be willing they could not possibly divide that up among the great many yards of calico it takes to make a hundred pounds of freight.

5. Q. Thirty cents per hundred pounds would amount to $6 a ton, would it not?

A. Yes, sir.

6. Q. Would not these same reductions in rates, about which inquiry was made of you, benefit the merchants at Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. It would benefit the merchants individually without benefiting the consumers.

7. Q. Would not the prosperity of the merchants at these points benefit those localities?

A. I believe the merchants are about as prosperous as they would be under lower adjustment of rates.

8. Q. Does not a low rate to a given point induce the investment of capital there and induce population to that point; is not the tendency of low rates in that direction?

A. The rates to Greensboro——

147 9. Q. I asked you the abstract question, if that is not the tendency of lower rates?

A. I do not think the question is involved in the present case. I do not think a reduction in the rates to these particular points would increase population or business.

10. Q. Does not Atlanta enjoy lower rates than the surrounding points in all directions, and has not this been the case for a long series of years?

A. The rates from Eastern cities to Atlanta are in line with the rates from Eastern cities to other competitive points in other territories.

11. Q. That is not responsive to my question. Mr. Stenographer, please read the question.

(The question was read to the witnesss.)

A. Atlanta does not enjoy lower rates from Eastern cities than from from points in that vicinity competing with it for trade in the same territory as Rome, Birmingham, Macon, &c.

12. Q. Does not Atlanta enjoy lower rates than Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro on the Georgia Railroad, and Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta on the Western & Atlantic Railroad, and Newnan, Grantsville on the Atlanta & Western Railroad, and Jonesboro, Hampton, and Griffin on the Central Railroad of Georgia?

A. Atlanta enjoys lower rates from the East to the points you mentioned, but those points do not compete with Atlanta for the distribution of freight.

13. Q. If those points had the same rates as Atlanta given them, could they not compete with Atlanta for the trade?

A. No, sir.

14. Q. Has not Atlanta been benefited by the lower rates to Atlanta than to these surrounding points in all directions?

A. It has enabled it to distribute freight to points within its territory.

15. Q. You mentioned, I believe, in your direct examination, a number of lines from Northeastern cities that could be formed to Atlanta. Can not the same lines be formed to Stone Mountain, Covington, Conyers, Social Circle, Madison, and Greensboro, with the Georgia Railroad as a terminal carrier?

A. Traffic for Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain up to Atlanta, the base point, is as competitive as the traffic consigned to Atlanta proper.

16. Q. Does not the Georgia Railroad connect at Atlanta with all these lines which you named?

A. It does.

148 17. Q. You stated in your direct examination that the average receipts per ton per mile and the estimated cost of carrying per ton per mile of freight in general furnished no standard from which could be ascertained what is a reasonable rate in a given case?

A. No, sir; I stated that was not a standard in the making of rates.

18. Q. Are they standards in determining the reasonableness of a rate in a given case?

A. They may be a factor in some cases to judge it by, but they would not be a standard.

19. Q. How long have the roads been in the habit of making out these data—the average per ton per mile and the estimated cost of carrying one ton per mile?

A. For as long as I have been connected with the railroads.

20. Q. You have been connected with them since 1880?

A. Yes, sir.

21. Q. What use do the roads make of these data?

A. It gives them a chance to know what the average rate per ton per mile is that they realize on their entire traffic that may be used for other purposes.

22. Q. These data are the result of calculation, are they not?

A. Yes, sir.

23. Q. From the present rates from New York via the Clyde Steamship Company to Boston and thence via the South Carolina Railway to Augusta and thence via the Georgia Railroad to Atlanta pay operating expenses?

A. I think they do.

24. Q. Do they pay anything over and above operating expenses?

A. I think they do.

25. Q. How do you determine whether a given rate is reasonable or unreasonable?

A. If a point under any prevailing adjustment of rates is able to hold and develop its trade, I regard such an adjustment of rates as reasonable.

26. Q. Is a rate reasonable which does not yield the carrier a proper remuneration over and above the cost of service?

A. I do not believe carriers make rates below the cost of transportation. I would consider such a rate as unreasonably low.

27. Q. It would not, then, be a reasonable rate unless it yielded a remuneration over and above the cost of service?

A. It would be an unreasonably low rate.

149 28. Q. Is not therefore the expense of cost of the service an element to be considered in determining the reasonableness in and of itself of a given rate?

A. I presume when we get rates down to a certain point that element would be considered a factor.

29. Q. Does not the cost or the expense of the service of transportation

depend largely, or to some extent, on the length of the haul, other things being equal?

A. Distance is a factor, but not a controlling one.

30. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Not necessarily; through traffic for the longer haul is handled in less time than local traffic for the shorter haul.

31. Q. I stated, other things being equal—that is, the same rate of speed for the long haul as for the short haul—is not the consumption of time greater the greater the distance?

A. The consumption of time is a factor in the expense, of course, like everything else.

32. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is one of the items of expense.

33. Q. The answer to that is yes, I suppose?

A. Yes, sir.

34. Q. Is not the wear and tear on locomotives, cars, tracks, road-bed, etc., greater the greater the length of the haul?

A. That is another item of expense.

35. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the road, other things being equal?

A. Yes, sir; the longer the road the larger the total expenses of maintaining the road.

36. Q. Does it not require more locomotives, cars, and more crews for the running of trains on a long road than on a short one, as a general rule?

A. That depends largely on the amount of traffic you have got to handle.

37. Q. Other things being equal, does not distance add to the cost of building the road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. It costs more to build a 500-mile road than a 50-mile road, and the fixed charges on a 500-mile road would be greater than on the 50-mile road, although the charges may not be greater per mile.

150 38. Q. Is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper markets for goods or produce which he will will not have in a haul of 50 miles?

A. If you mean by that that a 100-mile road to a shipper at Nashville for the distribution of his merchandise is of more value than a road only 50 miles in length, for instance, that is true.

39. Q. Are the rates from New York via Charleston and Augusta, Stone Mountain, Covington, Conyers, Social Circle, based on the rate to Atlanta?

A. The rate from Eastern cities to Greensboro based on Augusta; likewise do the rates to Madison; to Social Circle, first, second, and Class B based on Atlanta, the other classes on Augusta; to Covington, classes 1, 2, 3, A, and B based on Atlanta, the balance of the classes on Augusta; to Conyers, the rates on classes 1, 2, 3, 4, and 5, A, B, and H based on Atlanta, the other classes on Augusta; to Stone Mountain the

rates based on Atlanta, except Classes C, D, and F, which are based on Augusta.

40. Q. When rates are based on Atlanta, they consist of the through rate to Atlanta plus the local rate back to these points?

A. Yes, sir.

41. Q. Is not traffic transported from New York via the Clyde Steamship Company to Charleston, and thence via the South Carolina Railway to Augusta, and thence over the Georgia Railway to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain under a through bill of lading naming an aggregate through rate issued by the initial carrier at New York?

A. I assume it is, but I could not answer positively. The Louisville & Nashville Railway does not participate in that traffic.

42. Q. Is not the expense to the carrier in strictly local hauls in less than carloads greater per ton per mile than on long through hauls?

A. Yes, sir; it is more expensive to handle local business than the through business

43. Q. Were not the rates to Atlanta via the lines from New York above named to Atlanta established originally by agreement between the carriers composing those lines as members of the Southern Railway & Steamship Association?

151 A. That is my understanding; that they were originally so made.

44. Q. Are not the rates by all the lines from New York to Atlanta the same?

A. I believe they are.

45. Q. Were not the rates by all these lines originally established by agreement between those lines as members of the Southern Railway & Steamship Association?

A. I think originally they were, so far as they controlled it against water competition.

46. Q. Does the railroad commission of Georgia attempt to fix through rates on interstate commerce or any proportion of those rates?

A. No, sir.

47. Q. Why is the excess of the rate from New York by the lines above named on certain classes of goods to Stone Mountain, Conyers, Covington, and Social Circle fixed by the local rate from Atlanta back to those points?

A. It can not be made higher.

48. Q. Are the local rates in those instances, between Atlanta and Stone Mountain, Conyers, Covington, Social Circle, the measure of the influence of competition in reducing the Atlanta rate?

A. Traffic between Atlanta and Stone Mountain, Covington, Conyers, and Social Circle is not competitive, but in fixing rates from eastern cities to these local points, these local points are given the benefit of the competition that compels the existing rate to Atlanta and Augusta.

49. Q. Does not this combination of local and through rates, in fixing the rate to Stone Mountain, Conyers, Covington, and Social Circle, enable the Atlanta merchants to ship goods from New York through those points to Atlanta and then back to those points at the same aggregate rate as they can be shipped from New York to those points in the first instance?

A. Only in cases where the rate is based on Atlanta.

50. Q. Does not this enable the Atlanta merchants to compete with the merchants of Stone Mountain, Conyers, Covington, and Social Circle in those points and in the territory adjacent?

A. The Atlanta jobbers only sell to merchants at those points and do not supply the local consumption at and around them.

152 51. Q. Do not merchants at those local points now for the most part get their supply of goods direct from New York and other northern cities.

A. I could not say.

52. Q. Under existing rates can merchants at the shorter-distance points, Stone Mountain, Covington, Conyers, Social Circle, etc., sell goods at Atlanta and in the territory adjacent in competition with Atlanta merchants?

A. The merchants at those points do not compete with jobbers of Atlanta.

53. Q. Would the carriers charge higher than the present rates to Atlanta from New York and other northeastern cities if competition affecting the transportation to Atlanta did not exist?

A. If competition at Atlanta was eliminated I think higher rates would be charged.

54. Q. Would that be because the present rate, viewed from the standpoint of the value and cost of service, would be unreasonably low?

A. Not necessarily.

55. Q. Are not the present rates to Atlanta from New York and other northeastern points, viewed from the standpoint of the value and cost of the service and excluding competition as an element in fixing them, unreasonably low?

A. No, sir; I do not think they are unreasonably low.

56. Q. Still, you say the roads would increase them if there was no competition—if competition was eliminated?

A. Yes, sir; they are low, but not unreasonably low.

57. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. Since 1882.

58. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever to your personal knowledge been made in that territory, before or since the enactment of the act to regulate commerce in 1877, except in cases of competition in transportation to the longer-distance point?

A. So far as my knowledge goes no exception has been made in making a greater charge for the shorter than for the longer distance under dissimilar circumstances and conditions.

59. Q. Is not competition in transportation the only ground or reason for making a higher rate for a shorter than for a longer haul over the same line in the same direction, the shorter being included in the longer?

153 A. Competition is a controlling factor.

60. Q. Is there any other factor? And if so, state it.

A. No, sir; it is a controlling factor. I do not mean by that simply the competition between carriers, but also competition between markets.

61. Q. If all the roads or lines reaching to Atlanta from New York and other Northeastern cities made no greater charge to the shorter distance points on their lines than Atlanta, would there be any necessity for such greater charge to shorter distance points by any one of such roads or lines in order to prevent loss of traffic?

A. An advance in the rates from Eastern cities to Atlanta to the figures established to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain would result in the diversion of the Atlanta traffic from the established lines to tramp ships, sail or steam, coastwise to the South Atlantic ports, the rates from the ports to Atlanta being fixed.

62. Q. I believe you stated that Madison and Social Circle were junction points?

A. Yes, sir.

63. Q. What roads connect at Madison?

A. The Central Road of Georgia crosses the Georgia road at Madison.

64. Q. And what roads lead to Social Circle or pass through Social Circle?

A. The Gainesville, Jefferson and Southern Railway running from Gainesville; that is a terminal line at Social Circle.

65. Q. Do not these different roads compete for traffic to Madison and Social Circle?

A. Traffic for these points up the base point is as competitive as traffic destined to the base point proper.

Redirect examination by Mr. BAXTER:

1. Q. Please examine copy of the report made by the Louisville & Nashville Railroad Company to the Interstate Commerce Commission for the year ending June 30, 1893, here shown you (exhibiting report to witness), and from page 17 state the amount of dividends declared that year.

A. $2,112,000.

154 2. Q. Refer to page 19 of the same report and state the amount of interest paid by the said company upon the funded debt during said year.

A. $4,233,978.38.

3. Q. Refer to page 45 of said report and state the amount paid by said company during that year for operating expenses.

A. $14,670,055.07.

4. Q. Taking the rates allowed by the Louisville & Nashville Railroad Company upon its entire line of traffic, passenger as well as freight, to and from all points and upon all the classes, is it true that the revenue derived from that total line of rates would have to be sufficient to pay the amounts shown by that report to have been paid out for dividends, interest on the funded debt, and operating expenses?

A. Yes, sir.

5. Q. Now suppose a rate upon a particular class of traffic between any two specified points is sufficient to pay its due proportion of operating expenses and interest upon the funded debt, but is not sufficient to pay its proportion of those two items and also its proportion of the dividends, would you consider the company justified in working for that rate?

A. Yes, sir; if it paid something over and above the cost of handling.

6. Q. Now, suppose a rate upon a particular class of traffic between particular points is not sufficient to pay its proportion of dividends or its proportion of the funded debt, but will pay more than its proportion of the operating expenses, would you decline that traffic?

A. No, sir.

7. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Recross-examination by Mr. SHAVER:

1. Q. If a given rate to a given point is not high enough to pay operating expenses on the traffic to that point, does not a part of those operating expenses have to be borne by the traffic to other points?

A. We do not mean to take business that will not pay operating expenses.

2. Q. If a given rate to a given point does not pay operating
155 expenses and also something on the dividend and fixed charges, would not a part of the burden of paying those dividends and fixed charges which ought to be borne by the traffic to that point have to be borne by the traffic to other points?

A. I think not, sir. Where freight pays the additional expense in handling it, it is no burden upon any other traffic.

3. Q. I asked if the payment of dividends and of interest on investment, etc., which are known, I believe, as fixed charges, if a part of that burden which ought to be borne by the traffic to a given point, the rate on which does not pay any part of that burden, would it not have to be borne by the traffic to other points?

A. I can not answer differently from what I have done; that is, that traffic that pays the additional expense of handling is not a burden upon those items.

4. Q. As a general rule, ought traffic to all points bear a certain proportion of the burden of the fixed charges?

A. I fancy that is the way everybody would like to have it.

5. Q. I asked if that ought not to be the case as a general rule?

A. Well, there are exceptions to all rules, and, as I said, it would be a very desirable rule.

6. Q. That would be equitable and just, would it not?

A. Yes, sir; it would be equitable and just, but the conditions under my previous answer are not inequitable.

FORT MONROE, VA., *June 23, 1897.*

T. S. DAVANT, a witness on behalf of the defendant, having been duly sworn, testified as follows:

1. Q. State your name, age, residence, and occupation.

A. T. S. Davant, general freight agent Norfolk & Western Railroad Company; residence, Roanoke, Va.; age, 47 years.

2. Q. How long have you been connected with the railroad traffic departments in this country?

A. I entered the railroad service in 1865. I have been in charge of the traffic departments of various roads since 1874.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain more than to Atlanta. The rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta were,
156 as shown by the report and opinion of the Commission, as follows, in 1892:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	64	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. I do not believe the reduction in the rates would have the effect of increasing the business sufficiently to compensate the carriers for making the reduction. This opinion is based upon a general knowledge of the business which has been acquired by years of experience in the transportation of freight shipped from the East to the South.

4. Please state whether said rate from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just and reasonable or unjust and unreasonable. Give your reasons for any opinion you may express.

A. I believe that the rates are just and reasonable, because they are in line with the rates that are published from the same points of origin to similarly located points of destination on other roads in the same section of country, and also because they are made up of two separate rates, which are each reasonably low, namely, the rates from New York and Philadelphia, etc., to Augusta and Atlanta, which are controlled by water competition to and through the ports of Savannah and Brunswick, and the low rates made by the Georgia railroad commission within
157 the State of Georgia from Augusta to Atlanta to the several points of destination.

5. Q. State what lines actually and actively competed in 1892 and now compete from New York and Philadelphia, etc., in the transportation to Atlanta, Ga., of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines actually and actively competed in 1892 and do now compete for freight shipped to Atlanta from New York, Philadelphia, etc.:

The Mallory Steamship Line via Brunswick.

Ocean Steamship Company via Savannah.
The Merchants and Miners' Transportation Company via Norfolk.
The Clyde Steamship Company via Charleston.
The Atlantic Coast Line via Norfolk (rail and water line).
The Seaboard Air Line via Norfolk (rail and water).
Piedmont Air Line (rail and water) via Norfolk.
The Virginia, Tennessee and Georgia Air Line via Norfolk (rail and water).
The Richmond and Danville Despatch via Alexandria (all rail).
Great Southern Despatch via Hagerstown (all rail).
The Southern State Despatch via Hagerstown (all rail).

6. Q. State what railroads or other transportation lines actually and actively competed in 1892 and now compete for the transportation of said classes of freight to Atlanta, Georgia, from Ohio River points to sections of the country other than New York, Philadelphia, &c.

A. The following railroads, in connection with boats on the Ohio River and with railroads penetrating the territory north of that river, actually and actively competed in 1892 and do now compete in the transportation of freight to Atlanta:

The Norfolk & Western Railroad.
The Chesapeake & Ohio Railway.
The Cincinnati, New Orleans and Texas Pacific Railway.
The Louisville & Nashville Railroad.
The Southern Railway.
The Illinois Central Railroad.
The Mobile & Ohio Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Memphis & Charleston Railroad.
The Nashville, Chattanooga & St. Louis Railway.
The Western & Atlantic Railroad.

7. Q. State whether or not the Norfolk & Western Railroad and its connections actually and actively compete for the carriage
158 of freight of said classes to Atlanta, and if so, from what cities.

A. The Norfolk & Western Railroad and its connections for Atlanta business from Columbus, Ohio; Pittsburg, Pennsylvania; Harrisburg, Pennsylvania; Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York; Boston, Massachusetts; Norfolk, Virginia; Richmond, Virginia, &c.

8. Q. Does your railroad or its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. Yes, sir.

9. Q. Does your railroad or its connections advertise in said cities for the transportation of said freight to Atlanta?

A. Yes, sir.

10. Q. State whether the rates of freight of the various classes from New York, Philadelphia, etc., to Atlanta are controlled to any, and if so, to what, extent by competition.

A. The rates of freight from New York, Philadelphia, &c., to Atlanta are controlled by competition.

11. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. The competition between carriers does substantially affect the circumstances and conditions under which the transportation of freight is conducted.

12. Q. Is there any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain as exists at Atlanta?

A. No, sir.

Q. State whether the number of tons carried one mile, or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton per mile can be used, either singly or together, as a standard in railroad rate making. Give your opinion for any reasons you may express on that point.

A. The number of tons carried one mile, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile can not be used, either singly or together, as a standard in railroad rate making for the reason that the tariff anticipates the doing of the business, while these results can only be ascertained after the business is done. In other words, owing to the innumerable and variable conditions which effect and make up the cost of transportation, it is impracticable to make the cost of business already done the basis for making tariff that are necessarily prospective in their application.

159 14. Q. Explain in the basis of making rates from New York Philadelphia, &c., to Atlanta. Are the rates which are fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. The basis of making rates from New York, Philadelphia, &c., to Atlanta, which was observed in 1892 and is still observed, was the result of years of experiment, rate wars, compromises, &c. While said rates are not made on the Savannah or Brunswick combination themselves, the rates made by the water carriers from New York, Philadelphia, &c., to Savannah or Brunswick plus the rates authorized by the Georgia commission from said ports to Atlanta, they are and have been made with reference to such combinations, and while not unreasonable in and of themselves, are as high as they can be maintained by reason of the conditions referred to. As it is, it frequently happens that freight important in volume is taken from the Eastern cities to these Georgia points by steamship or sailing vessels at very low rates and then reshipped to Atlanta at the local rates, thus making the through rate.

15. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and then by steamship or sailing vessels and thence by the Georgia Railroad to Atlanta, control the rates which can be charged by the direct rail line operating from Cincinnati to Atlanta.

A. I do not know that freight is ever shipped in the manner stated, but it is entirely practicable to do so.

Cross-examination by Mr. SHAVER:

1. Q. You stated in your direct examination that certain named reductions in the rates from New York to Brunswick, Madison, Social Circle, Covington, Conyers, and Stone Mountain would not, in your opinion, increase the business at those stations sufficiently to compensate carriers, I beli've?

A. Yes, sir.

2. Q. Would not such reductions result in some increase of business at those points?

A. I think it is fair to assume that there would be some increase, but from my knowledge of the general situation and the conditions—the territory which surrounds these small stations, interior stations—I am satisfied that there would be no material increase in the business.

3. Q. With those reductions in rates to those points, their rates would not be higher than the Atlanta rates, I believe. Is that so?

160 A. If, as I understand, the proposition is that the rate from New York, Philadelphia, &c., to these stations shall not be higher than the rate to Atlanta, my answer to your question is yes.

4. Q. I ask you if these named reductions which Mr. Baxter inquired about to these points, if made, would not make their rates the same as to Atlanta?

A. Yes, sir.

5. Q. Do Atlanta merchants now trade at those points and in the territory adjacent?

A. I think they do. I think Atlanta merchants do.

6. Q. If those reductions were made and the rates at those points then became not higher than the Atlanta rates, could the Atlanta merchants trade at those points and in the adjacent territories to the same extent they now do, in competition with merchants at those points?

A. I do not think the same rates from Eastern cities to Greensboro, &c., would materially affect the rates of Atlanta with those points. There are several reasons for that. These merchants engaged in business at these small stations are men of limited capital, and they can not carry stocks of goods that are necessary to supply the trade of the contiguous territory. The fact that the Atlanta merchants are men of capital, have the means of carrying large stocks of goods from which not only the country people themselves but the country merchants draw their supplies from day to day as they are needed, gives them the hold upon that trade, which I think would not be disturbed to any serious extent by the reduction in rates suggested.

7. Q. If the merchants at Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain had the capital that the Atlanta merchants have, could they not ship their goods then direct from New York, having the same rates as Atlanta?

A. Yes, sir.

8. Q. Could they not in that case successfully compete with Atlanta for business in their own localities and adjacent thereto?

A. Assuming that the local merchants at those places named had the capital and other facilities for extending the same accommodations to the trade contiguous to those points, why, with the same rates from New York as Atlanta they could take the place of the Atlanta merchants.

9. Q. Is not the tendency of giving a locality lower rates to induce capital to invest at such local points and to induce population to come to such localities?

A. That has not been my experience.

10. Q. Is not the tendency of rates which discriminate against

161 one locality in favor of another locality for business in the same territory to drive away capital and population from the locality

discriminated against and to build up the locality in whose favor the discrimination is made?

A. Whatever discrimination in rates may exist is, in my judgment, based upon the natural advantages which one locality may have over another, and the process of simply leveling the rate would not have the effect of overcoming the natural disabilities of the different places.

11. Q. Has not Atlanta been built up to a large extent by the railroad?

A. Yes, sir; that is my judgment.

12. Q. Is not Atlanta located in a poor country, agriculturally speaking?

A. Atlanta is perhaps less favorably situated in that respect than some other cities, but still she draws from all important agricultural cities on all sides of her.

13. Q. Is the territory immediately adjacent to Atlanta richer in soil or in minerals than the territory immediately adjacent surrounding Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. I do not know that it is.

14. Q. Does not Atlanta enjoy the advantages of lower rates than those given points immediately around Atlanta on traffic from all directions?

A. In a general way, yes.

15. Q. You stated in your direct examination that the average receipts of a road per ton per mile and estimated cost of carrying a ton a mile on traffic in general furnished no standard by which you could fix what was a reasonable rate to be operated in the future. Is not such data valuable, to a certain extent, in determining the reasonableness of a rate already in existence?

A. Measurably, yes, sir.

16. Q. You mentioned in your direct examination a number of lines which could be formed by various combinations of roads and steamship lines from New York to Atlanta and Augusta, I beli've—both of these points.

A. I did to Atlanta. The same condition applies to Augusta.

17. Q. Can not the same lines be formed to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain with the Georgia Railroad Company as a terminal carrier to those points; or, in other words, does not the Georgia Railroad connect at Atlanta and Augusta with all these lines which you have named?

A. It is my understanding that all the lines that I have named
162 as competing for Atlanta business do not and can not compete for business to Greensboro, &c.

19. Q. I asked you, and ask you again, if the Georgia Railroad does not connect at Atlanta with all the roads to that point?

A. Yes, sir.

20. Q. Is not the same thing the case at Augusta?

A. Yes, sir.

21. Q. Does the Georgia Railroad Commission undertake or has it any authority to fix through rates on interstate commerce or any proportion of said rates?

A. No, sir.

22. Q. The action of the Georgia Railroad Commission is confined to local rates upon traffic between points in Georgia, is it not?

A. The rates are made between points in Georgia; yes, sir.

23. Q. You stated that the rates which you named from New York & Philadelphia on different classes to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were reasonable in and of themselves.

A. Yes, sir.

24. Q. Are the much lower rates from those cities through Greensboro, Madison, Social Circle, Conyers, Covington, and Stone Mountain to Atlanta also reasonable in and of themselves, or do you think them unreasonably low?

A. I think the rates from Eastern cities to Atlanta are reasonable in and of themselves.

25. Q. Do you think they are reasonable in themselves viewed solely from the standpoint of the cost and value of the service?

A. No, sir; not alone that. I think the amount of business involved on the principle that the greater the volume of business the lower the rates can be made—in other words, if lower basis of rates will induce a large volume of business, as long as the rates are reasonable in themselves, why, it is to the advantage of the carrier to encourage the greater volume of business.

26. Q. My question was: Do you consider the rates solely from the standpoint of the cost and value of the service to Atlanta from New York and Philadelphia reasonable and just in and of themselves?

A. No, sir.

27. Q. Is the expense of the service of carriage an element to be considered in determining what is a reasonable rate?

A. Yes, sir. It is very hard to get at, but some regard has to be had for it.

28. Q. Does the cost or the expense of the service or transportation depend largely on the length of the haul, other things being equal?

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A. Yes, sir.

29. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

30. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

31. Q. Is not the wear and tear on locomotive, cars, track, roadbed, etc., greater the greater the length of the haul?

A. I am not a machinist, but I should think that was the case.

32. Q. Other things being equal, is not the cost of keeping the road in repair or in condition the greater the length of the road?

A. I really do not know how to answer that question, because it is entirely out of my jurisdiction.

33. Q. Does it not require more locomotives and cars and more crews for running trains on a long road than on a short one, other things being equal?

A. I would think so.

34. Q. Other things being equal, does not distance add to the cost of building a railroad, and are not, therefore, the fixed charges, such as interest on capital invested, greater the greater the length of the road?

A. I should think so; yes.

35. Q. Is not the service more valuable for the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper a market for his goods or produce which a haul of 50 miles will not?

A. It seems to me that that question will have to be answered from the shipper's point. To the shipper who has his wares to market a fifty-mile haul is as much importance to him as another shipper who has his wares to market on a hundred-mile haul.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. 32 years.

37. Q. That territory east of the Mississippi and south of the Ohio and Potomac rivers was what was known as the territory subject to the jurisdiction of the Southern Railway & Steamship Association, was it not?

A. For part of that time, yes. But that has not been continuously the case.

164 38. Q. Has the greater charge for the shorter than the longer haul over the same line in the same directions, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in the case of competition in transportation to the longer distance point?

A. As a rule, competition is the controlling factor when higher rates are charged for the shorter than for the longer distance, but there are other conditions which also control in the matter.

39. Q. In connection with the competition?

A. Yes, sir.

40. Q. Competition is invariably present in such cases?

A. Yes, sir.

41. Q. That was before and since the passage of the act to regulate commerce?

A. Yes, sir; the same conditions exist.

42. Q. Is not traffic transported from New York and other Northeastern cities via the Clyde Steamship Line to Charleston, thence by the South Carolina Railway to Augusta, and thence via the Georgia Railway to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain under a through bill of lading naming the aggregate through rate issued by the initial carrier?

A. I think so.

43. Q. Is not the expense to the carrier of strictly local hauls in less than carloads greater per ton per mile than on long through hauls?

A. Yes, sir.

44. Q. Are not local rates made higher than through rates to cover the extra expense of local hauls?

A. Not only the local hauls, but there are other conditions. It is generally known that the cost of handling local business is more expensive than handling through business. Then, again, the fact that the volume of through business is oftentimes much larger than that of the local business is another element which is taken into account in adjusting the local and through rates.

45. Q. The expense is one of the elements that causes local rates to be more than the through rates for the same distance?

A. Yes, sir.

46. Q. Are not the through rates by all the lines from New York and other Northeastern cities to Atlanta the same, generally speaking?

A. Yes, sir.

165 47. Q. Were they not established by agreement between those lines as members of the Southern Railway Steamship Association?

A. Yes, sir; of course, the circumstances which I have referred to as controlling the aggregate or maximum rate had to be taken into consideration.

48. Q. Atlanta is within the territory which was formerly said to be under the jurisdiction of the Southern Railway and Steamship Association, is it not?

A. Yes, sir.

49. Q. Are not the rates from New York on the lines involved in this case to Greensboro, Madison, Social Circle, Covington, Convers, and Stone Mountain made up of the through rates to Augusta or Atlanta plus the local rate on to or back to those points?

A. I have already stated that was the case.

Redirect examination by Mr. BAXTER:

1. Q. In competing for the transportation of freight, can rates be fixed in proportion to the cost of service by the competing carriers?

A. No, sir.

2. Q. If one competing line is 100 miles long and the other competing line is 200 miles long, and the cost of service is twice as much upon one line as it is upon the other, must not the two lines compete at substantially the same rates, or one or the other go out of the business?

A. Yes, sir. There is no rule about it, but it is pretty generally observed throughout this country that the short line between two points is the maker of the rates between those points.

3. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

FORT MONROE, VA., *June 24, 1897.*

J. M. CULP, a witness on behalf of the defendant, having been duly sworn, testified as follows:

1. Q. State your name, age, residence, and occupation.

A. J. M. Culp; 48 years; Washington, D. C.; traffic manager Southern Railway.

166 2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Upwards of 26 years.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta,

to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain more than to Atlanta. The rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta were, as shown by the report and opinion of the commission in 1892, as follows:

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. The effect of a reduction in the rates from New York and Eastern cities to these points would not be to increase the volume of traffic over the road. It might distribute the traffic as between these several stations and as between these stations and Atlanta somewhat differently than it is at present distributed, but it would reduce the revenue of the line. No more dry goods or boots and shoes or manufactured articles or merchandise or other traffic would be consumed in the territory served by Atlanta and these points, and the line would suffer a reduction in revenue on the traffic already shipped to these local stations under the present adjustment of rates.

167 4. Q. State whether said rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just and reasonable under the first section of the act; and state your reasons for any opinion you may express.

A. They are not unjustly nor unreasonably high. They are lower than rates by any other mode of transportation known. They are relative to rates to points similarly situated in the same section of country. They have not and do not have the effect of prohibiting the transportation of traffic by shippers or consignees at a profit to them. They are not higher than the rates to Augusta or Atlanta, which are controlled by strongly competitive forces, added to the rates from Augusta or Atlanta, pronounced by the railroad commission of the State of Georgia as just and reasonable.

5. Q. Name the various transportation lines that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F classes.

A. I will endeavor to enumerate the principal ones. From the Western section of the country, lines operating from the several Ohio and Mississippi crossings are—

The Cincinnati, New Orleans and Texas Pacific Railway.

The Baltimore & Ohio Southwestern.
The Louisville & Nashville.
The Southern Railway in Kentucky.
The Illinois Central Railroad (Louisville division).
The Ohio Valley Railroad.
The Nashville, Chattanooga, St. Louis Railway.
The Illinois Central Railroad (main line).
The Mobile & Ohio Railroad.
The Memphis & Charleston Railroad.
Kansas City, Memphis & Birmingham Railroad.
The Alabama & Vicksburg Railroad.
The New Orleans & Northeastern Railroad.

Of these the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, the Illinois Central Railroads have routes from two or more of the river crossings referred to.

These lines named connect at crossings with lines operating beyond the Ohio River and the Mississippi River, reaching the entire Northern, Northwestern, and Western sections of the United States.

Second. From the Northeastern section of the country, including Eastern seaboard cities, there are, in addition to some other lines previously enumerated in the first paragraph—

168 The Pennsylvania Railroad, the Baltimore & Ohio Railroad, the Philadelphia & Reading Railroad, and other lines operating via all-rail routes through Hagerstown, Roanoke Junction, Strasburg Junction, Alexandria, Richmond, and Portsmouth, Virginia, in connection with lines operating south of those junctions, such as—

The Southern Railway.
The Norfolk and Western Railway.
The Seaboard Air Line.
The Atlantic Coast Line.
The Cape Fear and Yadkin Valley Railroad.

Besides these there is competition of thoroughly-equipped and well-managed steamship routes operating through South Atlantic ports, such as—

Merchants & Miners' Transportation Company, operating from Boston via the Chesapeake ports, and from Baltimore via Savannah, Georgia.

The Ocean Steamship Company from Boston, New York, and Philadelphia via Savannah, Georgia.

The New York & Texas Steamship Company (Mallory line), operating from New York via Brunswick, Georgia.

The Clyde Steamship Line, operating from New York and Boston via Charleston, South Carolina, and from Philadelphia via Chesapeake ports.

The Old Dominion Steamship Company, operating from New York via the Chesapeake ports.

The Baltimore Steam Packet Company (bay line) and the Baltimore, Chesapeake & Richmond Steamboat Company (York River line), operating from Baltimore, Md., via the Chesapeake ports. These various steamship lines have rail connections at said Chesapeake ports or South Atlantic ports, and for years competed and still actively compete for traffic from the entire Eastern seaboard to Atlanta.

6. Q. State whether or not the Southern Railway and its connection

actually and actively compete for the carriage of freight of said various classes to Atlanta; and if so, from what cities.

A. It does so compete from the entire Eastern and Northern and Western sections of the country; also from the cities of Virginia; in fact, all of the principal manufacturing and shipping points in the South to Atlanta, Georgia.

7. Q. Does such railroad or its connections have agents at said cities to solicit said freight for Atlanta?

A. At many of these points the Southern Railway has its own agents; at other points its connections have agents; at some points both
169 the Southern Railway and its connections have agents, all of whom actually daily solicit traffic for Atlanta; who advertise by having their soliciting offices established at these cities, and by the publication and issuing of traffic, by actual contact with the public and otherwise.

8. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain as exists at Atlanta.

A. There is not the same competition. There is competition as far as Augusta or Atlanta by the lines leading to those points, and the rates from the East to these points are controlled to a great extent by competition up to Augusta and Atlanta, but from Atlanta and Augusta to these points, except Madison and possibly Social Circle, there is no rail competition. Madison, Georgia, is reached directly by both the Georgia Railroad and what was formerly the Macon and Northern Railroad, now a part of the Central of Georgia Railway. Social Circle is reached by the Georgia Railroad and also by the Gainesville, Jefferson & Southern Railway, which was at the time of the filing of these complaints operated by the Georgia Railroad Company under lease—at present in the receiver's hands, but so far as I am advised managed by the same officers who manage the Georgia Railroad. At neither Madison nor Social Circle has competition at any time been of sufficient force or effect to cause a reduction in the rates from New York or Eastern cities to those points to the same rates as to Atlanta.

9. Q. Explain the basis of making rates from New York, Philadelphia, &c., to Atlanta. Are the rates fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from the East to Atlanta are made by taking the rates of the steamship lines to South Atlantic ports, by adding thereto the rates in effect from Savannah and Brunswick to Atlanta, which rates are approved by the railroad commission of Georgia. These rates are not in all instances as high as the mileage rates of the Georgia commission, but they are approved by the Georgia commission and are made under the authority of the Georgia commission, which authorizes rates from ports within the State of Georgia to Atlanta to be made as low as from the ports, say, Charleston and Wilmington to Atlanta, although these rates may be lower than the mileage tariff of the Georgia commission. Under this authority the lines within the State of Georgia may charge from Savannah to Atlanta less than from Savannah to the points intermediate between Savannah and Atlanta.

10. Q. Can the number of tons carried one mile or the number
170 of tons carried of freight earning revenue or the average receipts per ton per mile, or the average cost of carrying one ton one mile either jointly or separately be used as the standard for railroad rate making?

A. It can not and is not.

11. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. It does. Not only does it affect the rate itself, but it likewise affects the circumstances and conditions under which the property may be carried. Competition will require a road to run trains at a higher rate of speed; it will require it frequently to carry cars loaded to a less weight per car; it will require it to take sometimes a part of a carload without waiting to fill up the car; it will require frequently the road to pay a claim, the payment of which the railroad company might successfully resist, in order to get business, and therefore it does very materially affect the circumstances and conditions under which the property is transported, in addition to the rate of freight which it affects.

Cross-examination by Mr. SHAVER:

1. Q. You stated in you direct examination that such reductions in rates from New York, over the line involved in this case, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, which reductions would make rates to those points not less in excess of the rates to Atlanta, would not in your opinion increase the total traffic hauled by the road. Would it not increase the proportion of that traffic hauled to these intermediate points?

A. It might increase it to a small extent, but not materially.

2. Q. Do not Atlanta merchants sell goods at Stone Mountain, Covington, Conyers, Social Circle, Madison, and Greensboro, and in the territory adjacent to those points, in competition with local merchants at those points under the existing system of rates?

A. Yes, sir; and the merchants themselves.

3. Q. Would not these local merchants be enabled to compete more successfully with Atlanta merchants for this business under rates not higher than the Atlanta rates, and would not this tend at least to increase the volume of business at those points?

A. I do not think it would materially do that, and I do not believe it would materially increase the volume of business done to those points.

A reduction in the rates from the East to these points as stated
171 would not have any material effect, if any, on the price at which merchandise shipped from the East to these points is sold, and I repeat I do not think it would have any material effect to increase the volume of business shipped from the East to these points.

4. Do not lower rates tend toward lower prices of merchandise and produce?

A. Upon an article of freight in which the rate of freight is an important factor as to the price a material reduction in the rate of freight does tend to lessen the price; but in the class of business shipped from the East, especially to these stations, I do not believe that the reduction in

the rate of freight as referred to would reduce the price at all—certainly not to any material extent.

5. Q. The rates from New York on first-class goods over the line involved in this case to Madison is $1.44 per hundred pounds, whereas the rates to Atlanta, the longer distance points, on a haul through Madison is $1.14, making a difference of thirty cents in favor of Atlanta. Is not a difference of thirty cents in rates material?

A. A reduction in the rate of freight to the railroad would be a material reduction, but thirty cents per hundred reduction in the class of freight shipped from the East to these stations referred to would not be important in reducing the prices. Thirty cents per hundred pounds would not cause hats to be sold any cheaper or dry goods to be sold any cheaper, and I do not believe it would cause sugar and coffee to be sold materially cheaper to the consumer. If the rates were reduced to-morrow from New York to these points, I do not believe that it would follow as a result of the reduction in the rate by any reduction in the price of the articles.

6. Q. Lower rates at a locality tend to induce the investment of capital there, and also to induce population to come to such locality, do they not?

A. If a place has very materially lower rates than all the country surrounding it, other things being equal, the tendency would be to draw commerce there, manufacturers there, capital there; but that would not be the effect of a reduction in the rates to these stations the same as the Atlanta rates. It would make very little increase of population as the result of the reduction; it would not draw any capital there for investment. When articles are manufactured at a local station coming in competition with the same manufactured articles made at competitive points, both seeking the same destination, the rule is to make the rate of
172 freight from the local points or noncompetitive points not higher than from the next competitive point further away; so that the manufacturers are taken care of by that rule, and would not be affected by this suggested reduction.

7. Q. Does not Atlanta enjoy lower rates than the surrounding localities in almost every direction?

A. Atlanta enjoys lower rates from the West than do the localities immediately surrounding Atlanta enjoy from the West. Atlanta has lower rates from the East than some localities surrounding Atlanta or in the vicinity of Atlanta, but she does not have lower rates from the East than some surrounding localities.

8. Q. Has not this advantage in rates over the surrounding localities benefited Atlanta and increased her volume of business?

A. She has lower rates, and that fact has contributed to the advantage of Atlanta; but those lower rates are the result of competitive forces which the railroads have not been able to prevent or overcome. They exist, and the railroads have been compelled to adapt their rates to the conditions. These conditions do not exist at these local points on the Georgia Railroad, and the railroad companies and the carriers have not placed at these points an artificial arbitrary competition which does not exist, and which if placed there would materially decrease their revenue without any increase in the volume of traffic.

9. Q. It is a fact, however, no matter what caused these lower rates to Atlanta, that Atlanta has been benefited by them, is it not?

A. Yes, sir; to some extent; but that advantage of lower rates will always exist so long as there are different rates of freight from a given point of shipment to various destinations, and will exist unless there should be a uniform rate made to all points in the country, which is impracticable.

10. Q. You named in your direct examination a number of lines to Atlanta and also to Augusta, I believe. May not all these lines be formed to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain by a combination with the Georgia Railroad, on which those points are located?

A. Yes, sir; and all these lines have, if you compete up to Atlanta or Augusta, as the case may be, for traffic destined for these local stations.

11. Q. You stated that there was a railroad from Social Circle to Gainesville. Does not that road connect at Gainesville with the Atlanta & Charlotte division of the Richmond & Danville line?

A. With the Atlanta & Charlotte division of the Southern Railway now—formerly the Richmond & Danville.

173 12. Q. Could not a large number of lines be formed from the East or other directions by combinations with this line from Social Circle to Gainesville?

A. With the consent of this Gainesville, Jefferson and Southern Railway, controlled by the Georgia Railroad, and only with the consent of that line. But even if they were, the line could not at equal rates expect to do any business of any consequence in competition with the line via the Georgia Railroad. The business would have to be transferred from car to car at Gainesville, across the city.

13. Q. Have all the lines you mentioned in your direct examination actual, physical connection between the different members of the lines?

A. So far as I recall, yes; of course business from the steamers must be transferred into the cars of the railroad at the ports, but as between the rail lines themselves, so far as I recall, there is physical connection.

14. Q. Is it necessary, in your opinion, in order to form a through line by the combination of railroads that there should be actual physical connection between the different roads, members of the line?

A. No; the property may be transferred by cars or drays, but that impairs the efficiency of the route to have it transferred in that way.

15. Q. At Madison the Georgia Railroad also connects with the branch of the Richmond & Danville Railroad, does it not?

A. No; it connects with what is now a part of the Central of Georgia Railroad.

16. Q. Can not a number of lines be formed by combinations with that line from Madison as the terminal carrier?

A. Yes, sir; with the consent of the Central of Georgia Railroad.

17. Q. You stated in your direct examination that the rates involved in this case from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were just and reasonable. Are these lower rates of freight for the longer hauls from New York through those points to Atlanta also just and reasonable in and of themselves?

A. They pay a profit over and above the cost of transportation. They

are as high as competition will permit them to be made, and they may, therefore, gauged by these facts, be pronounced just and reasonable.

174 18. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration in excess of the cost of transportation?

A. In my opinion a road is always justified in taking the additional traffic, or traffic which it otherwise could not get, to the extent of making a rate as low as the actual movement, expense incurred in the movement of that traffic.

19. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost and the expense of the service of carriage?

A. It is very difficult to obtain the actual cost of carriage. Railroads arrive at that result just as nearly as they can and then they endeavor in making rates to fix that average cost or that estimated cost of carriage as a minimum below which they will not go. Now there may be average cost or estimated cost, including fixed charges: there is the cost which leaves out the fixed charges and take' all other kinds of expense; then there is a cost which pertains simply to the movement of a particular business, a cost which is incurred only because that particular business is moved.

20. Q. Is not the expense or the cost of the service of carriage an element to be considered in determining the reasonableness or the unreasonableness of a given rate or set of rates?

A. My experience is that the estimated cost is only used as a minimum below which the carriers will not go.

21. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Other things being equal, the longer the haul, the greater the cost.

22. Q. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Other things being equal, yes; a great deal, however, is covered by that term "other things being equal."

23. Q. Is not the consumption of fuel greater, the greater the length of the haul, other things being equal?

A. Other things being equal, yes.

24. Q. Is not the wear and tear on locomotives, cars, tracks, road, etc., greater, the greater the length of the haul, other things being equal?

A. Yes, sir.

25. Q. Is not the cost of keeping the road in repair or in good condition greater, the greater the length of the haul, other things being equal?

A. Yes, sir.

175 26. Q. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short road?

A. Other things being equal, yes, sir.

27. Q. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges such as interest on the capital invested, greater the greater the length of the road?

A. Other things being equal, yes, sir.

28. Q. Other things being equal, is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper more extended markets for his goods or produce than a haul of 50 miles?

A. Not necessarily. The haul to the shipper or consignee where he is at a point 100 miles distant from the point of shipment may not be worth as much as the haul to the consignees remote only 50 miles from the same point of shipment.

29. Q. How are the rates from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain made up? Are they combinations of through and local rates?

A. They are.

30. Q. Through rates to what point?

A. Through rates to Augusta generally. It is possible that some of the rates may be made on combination of rates to Atlanta and the local therefrom, but I am not positive about that without the records before me.

31. Q. Is not traffic transported from New York over the line in question in this case, which is via the Clyde Steamship Company to Charleston, and thence over the South Carolina Railway to Augusta, and thence over the Georgia Railway to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, under through bills of lading, naming an aggregate through rate issued by the initial carriers at New York?

A. I understand that shipments are consigned through and that through rates are guaranteed.

32. Q. Is not the expense to the carrier of strictly local hauls in less than car loads greater per ton per mile than on long through hauls?

A. Other things being equal, yes, sir.

33. Q. Are not local rates made much higher per mile than the proportions of through rates for the same distance?

A. Generally, yes, sir; not always though.

34. Q. Has the railroad commission of Georgia any authority or jurisdiction in respect to through rates or any proportion of through rates on interstate commerce?

A. I do not understand that it has any authority over through
176 rates or proportions of through rates in interstate commerce. But it has attempted to bring about a regulation of through rates on interstate commerce. It has complained to the railroads. And it has brought complaints before the Interstate Commerce Commission as to the rates; and this case is the result of one of those complaints.

35. Q. The act to regulate commerce authorized them to make complaints before the Commission?

A. I did not recall whether it does or not, but the law of Georgia authorizes them to do it.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. More than 26 years.

37. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887,

except in cases of competition in transportation to the longer distance point?

A. Not that I recall. No line willingly and of its own volition arbitrarily reduces the rates to a farther point to a less figure than an intermediate point. It is the result of competition where it does make the rate less for the longer than for the shorter distance in the same direction over the same line.

38. Q. You stated in substance in your direct examination that the average receipts per ton per mile and estimated cost of carrying one ton one mile on traffic in general did not furnish a standard by which you could determine what was a reasonable rate in a given case, I believe?

A. Yes, sir.

39. Q. Is not such data useful to some extent in determining whether an existing rate is or is not excessive?

A. It is useful in determining whether all the rates are excessive. In other words, the average receipts of a road per ton per mile might be as much that, taken in connection with other things, it might be held that rates were excessive. But much the largest proportion of the tonnage of all roads is carried at rates which are fixed by competition in some form or other, either of carriers or of markets, or of one product with another product, which will serve the same purpose.

40. Q. How long have carriers been making out this data as to average receipts per ton per mile and estimated cost of carrying one ton one mile?

A. A great many of them do not do it at all. The Southern
177 Railway to-day does not attempt to figure the cost per ton per mile of carrying freight. The records of the West Tennessee, Virginia & Georgia Railroad show that the estimated average cost for transporting all kinds of freight on all portions of the East Tennessee, Virginia & Georgia Railroad from April 1st, 1891, to June 24th, 1892, inclusive, was seventy-one one hundredths (.71) of a cent per ton per mile.

41. Q. Has not this data been kept by other roads for a great many years?

A. I have no information that any road has invariably kept the cost per ton per mile for a great many years. Some roads have done it for some years, I know.

42. Q. They have done it for their own use, have they not?

A. I assume so; it is published in their annual reports. I will say that my opinion is that it is very difficult, if not impracticable, to arrive at the actual cost per ton per mile of moving freight traffic over any road.

43. Q. This data is based upon actual calculation, is it not?

A. The average receipts per ton per mile are very easily arrived at. The average cost per ton per mile, as I have testified, is estimated as to the East Tennessee, Virginia & Georgia Railroad.

44. Q. The average receipts per ton per mile are the result of accurate calculation, is it not?

A. Yes, sir.

45. Q. Was not Atlanta recognized as a competitive point and as being entitled to competitive rates by the Southern Railway and Steamship Association?

A. It was recognized as a competitive point. It was only recognized as entitled to competitive or lower rates than to intermediate points, as competition might force those rates.

46. Q. Are not the rates in question in this case to Atlanta the same as they were during the existence of the Southern Railway and Steamship Association?

A. On these classes, yes.

47. Q. Were not the rates in question in this case to Atlanta promulgated by the Southern Railway and Steamship Association by the consent of the carriers, members of that association?

A. Published by the consent and direction of the members of the association.

48. Q. Are not the rates to Atlanta from New York the same by all the lines?

178 A. Published rates are the same by all, except by the Mallory Line, which are less.

49. Q. Are not the rates by all the rail lines from New York and other Northeastern points to Atlanta the same?

A. They are.

50. Q. Are the rates involved in this case by the ocean and rail lines the same by all those lines?

A. By all except the Mallory Line, which are less.

Redirect examination by Mr. BAXTER:

1. Q. Something has been said in the cross-examination in regard to the value of the service. May there not be a difference between the value of the service to the shipper and the value of the service to the carrier?

A. Precisely. The value of the service to the shipper or consignee for the transportation of 100 lbs. of stuff may be only 25 cents per hundred pounds. The value of that service may be to the carrier greater from at least two reasons: One, that it will cost it more to perform the service than the 25 cents. Another reason, that it may be employing all of its entire power and rolling stock in the transportation of property which yields it for an equivalent service much more net money than 25 cents would for the first service referred to.

2. Q. If the shipper living at Memphis where cotton is worth in the market, say 10 cents, ship that cotton to Holly Springs where it is worth in the market only 9 cents a pound, would not the value of the service to him be less than nothing?

A. It would; one cent per pound less than nothing.

3. Q. If, on the other hand, he shipped it from Holly Springs where it was worth 9 cents per pound to Memphis, where it was worth 10 cents per pound, the value of the service to him would be one cent, would it not?

A. Yes, sir; one cent per pound, and in either case the value of the service to the railroad company might be the same.

4. Q. Please file as Exhibit No. ½ to your deposition copies of the articles of agreement of the Southeastern Freight Association.

A. Yes, sir.

5. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause,

or either of them, or may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

179 NASHVILLE, TENN., *July 13, 1897.*

C. B. COMPTON, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. C. B. Compton; age, 43; residence, Louisville, Ky.; general freight agent of the Louisville & Nashville Railroad.

2. Q. How long have you been engaged in the railroad freight transportation business, and in what capacities?

A. I have been continuously in the employ of the Louisville & Nashville Railroad since 1871 in various capacities, amongst which are local freight agent, contracting freight agent, general agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendant to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta were, as shown by the report and opinion of the Commission in 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	64	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Stone Mountain	132	114	101	85	71	57	45	57	47	44	69	80	89½
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social
180 Circle, Covington, Conyers, and Stone Mountain, so as to make up for any loss of revenue that would otherwise result. Give your reason for any opinion you may express.

A. In my opinion the reduction in rates to the points named would not increase the volume of traffic, while decreasing the revenue to the extent that the reductions as made on the volume of traffic moving under each of the several classes. There are but two ways of increasing the movement of traffic to a particular point: First, by an increase of the consumption at that point, and, second, by making such point a jobbing and distributing center. As to increasing the consumption at Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, it stands to reason such result would not follow from a reduction in the rates. If the rates to those points were made not higher than to Atlanta,

not having the benefit of the diverging lines as in the case of Atlanta and Augusta, those several points could not become distributing points, as there would be no surrounding territory to which they could distribute in competition with Atlanta and Augusta.

4. Q. State whether said rates from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Convers, Stone Mountain are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. In my opinion said rates are just and reasonable. They are just and reasonable because they are the lowest combination of rates on either Augusta or Atlanta, and under them business from New York, Philadelphia, &c., moves freely in competition with other markets; and for the further reason that they are as low as can be made by any other method of transportation.

5. Q. State what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, &c., in transportation to Atlanta, Ga., on the freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. You asked what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, &c., in transportation to Atlanta, Ga., of classified freights. It is probable that if all the combinations were named the number would reach in the hundreds. It may be sufficient to make the following general statement:

From Boston—Direct steamer lines to Savannah, controlled by the Ocean Steamship Co. Lines of steamers and rail lines to New York, connecting with direct steamer lines from New York to Norfolk, Richmond, West Point, Charleston, Savannah, and Brunswick; and also the Merchants & Miners' Transportation Co. from Boston to Norfolk
181 and West Point, Va., and to Baltimore; at Baltimore the Merchants & Miners' Transportation Co. connects with its lines of steamers to Savannah.

From New York: The Ocean Steamship Co. to Savannah; the Clyde Line to Charleston; the Mallory Line to Brunswick; the Old Dominion Steamship Co. to Norfolk; the Old Dominion Steamship Co. to Portsmouth; the Old Dominion Steamship Co. to West Point and Richmond. The Pennsylvania Railroad via Harrisburg and Hagerstown. The Pennsylvania Railroad via Alexandria. The New Jersey Central Railroad in connection with the Reading Railroad via Hagerstown. The New Jersey Central Railroad in connection with the Baltimore & Ohio Railroad via Baltimore.

From Philadelphia: The Ocean Steamship Company to Savannah; the Clyde Line to Charleston. The Pennsylvania Railroad via Norfolk. The Pennsylvania Railroad via Alexandria. The Pennsylvania Railroad via Hagerstown. The Baltimore & Ohio Railroad via Baltimore, and the Baltimore & Ohio Railroad via Shenandoah Junction.

From Baltimore: The Bay Line of steamers to West Point; the Merchants & Miners Transportation Company to Savannah. The Western Maryland Railroad via Hagerstown. The Baltimore & Ohio Railroad via Shenandoah Junction. The Baltimore & Potomac Railroad via Alexandria.

In addition to the regular lines, some of which have been named above,

actively competing from Eastern cities, there should be considered the sailing vessels from Boston, New York, Philadelphia, and Baltimore to South Atlantic ports. I have named above the different initial lines competing in connection with the various rail connections to Atlanta.

6. Q. State what lines actually and actively competed in 1892 and now compete from Ohio River points and sections of the country other than New York, Philadelphia, etc., in transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines competed in 1892 and now compete from various Ohio River points to Atlanta:

From Cincinnati—

The Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via the Southern Railway.

Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via the Western & Atlantic Railroad.

Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via the Alabama Great Southern to Birmingham, thence via the Southern Railway to Atlanta.

182 Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via the Chattanooga, Rome & Columbus to Kramer, Ga., thence via Southern Railway.

Louisville & Nashville Railroad to Nashville, thence via the Nashville, Chattanooga & St. Louis to Chattanooga, thence via the Western & Atlantic Railroad.

Louisville & Nashville Railroad to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence via Southern Railway.

Louisville & Nashville Railroad to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence via Southern Railway.

Louisville & Nashville Railroad to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Louisville & Nashville to Jellico, thence via Southern Railway.

Baltimore & Ohio Southwestern to Louisville, Illinois Central to Memphis, Memphis and Charleston to Chattanooga, thence via Southern Railway.

Baltimore & Ohio Southwestern to Louisville, Illinois Central to Memphis, Memphis and Charleston to Chattanooga, thence via Western & Atlantic Railroad.

Baltimore & Ohio Southwestern to Louisville, Illinois Central to Memphis, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Baltimore & Ohio Southwestern to Louisville, Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, Southern Railway to Atlanta.

Baltimore & Ohio Southwestern to Louisville, Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Central Railroad of Georgia.

From Louisville—

Louisville & Nashville to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence via Western & Atlantic Railroad.

Louisville & Nashville Railroad to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence Southern Railway.

Louisville & Nashville to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via Southern Railway.

183 Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific to Chattanooga, thence via Western & Atlantic Railroad.

Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Southern Railway.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Western & Atlantic Railroad.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Southern Railway.

Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Central Railroad of Georgia.

From Evansville and Henderson:

Louisville & Nashville Railroad to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence via Western & Atlantic Railroad.

Louisville & Nashville to Nashville, Nashville, Chattanooga & St. Louis to Chattanooga, thence via Southern Railway.

Louisville & Nashville to Nashville, Nashville, Chattanooga and St. Louis to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Ohio Valley to Princeton, Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Southern Railway.

Ohio Valley to Princeton, Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Western and Atlantic.

Ohio Valley to Princeton, Illinois Central to Memphis, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Ohio Valley to Princeton, Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Southern Railway.

Ohio Valley to Princeton, Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Central Railroad of Georgia.

From Paducah:

Nashville, Chattanooga & St. Louis to Chattanooga, thence via Western & Atlantic Railroad.

184 Nashville, Chattanooga & St. Louis to Chattanooga, thence via Southern Railway.

Nashville, Chattanooga & St. Louis to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Southern Railway.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, thence via Western & Atlantic Railroad.

Illinois Central to Memphis, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Southern Railway.

Illinois Central to Memphis, Kansas City, Memphis & Birmingham to Birmingham, thence via Central of Georgia.

From Cairo:

Nashville, Chattanooga & St. Louis to Chattanooga, thence via Western & Atlantic Railroad.

Nashville, Chattanooga & St. Louis to Chattanooga, thence via Southern Railway.

Nashville, Chattanooga & St. Louis to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Grand Junction, Memphis & Charleston to Chattanooga, thence via Southern Railway.

Illinois Central to Grand Junction, Memphis & Charleston to Chattanooga, thence via Western & Atlantic Railroad.

Illinois Central to Grand Junction, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway.

Illinois Central to Holly Springs, Kansas City, Memphis & Birmingham to Birmingam, thence via Southern Railway.

Illinois Central to Holly Springs, Kansas City, Memphis & Birmingham to Birmingham, thence via Central Railroad of Georgia.

Illinois Central to Winona, thence via Southern Railway.

Mobile & Ohio Railroad to Corinth, Memphis & Charleston to Chattanooga, thence via Southern Railway.

Mobile & Ohio Railroad to Corinth, Memphis & Charleston to Chattanooga, thence Western & Atlantic.

Mobile & Ohio Railroad to Corinth, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway .

185 Mobile & Ohio railroad to Tupelo, Kansas City, Memphis & Birmingham to Birmingham, thence via Southern Railway.

Mobile & Ohio Railroad to Tupelo, Kansas City, Memphis & Birmingham to Birmingham, thence via Central of Georgia Railway.

Mobile & Ohio Railroad to West Point, thence via Southern Railway.

Mobile & Ohio Railroad to Lauderdale, thence via Southern Railway.

Mobile & Ohio Railroad to Lauderdale, thence Southern Railway to Selma, thence via Western Railway of Alabama to West Point, thence via Atlanta & West Point Railroad.

The lines actually and actively competing in the transportation of classified freight to Atlanta from sections of the country other than Ohio River points and other than New York, Philadelphia, etc., are too numerous to mention, comprising all roads north of the Ohio and west of the Mississippi rivers, in connection with the various routes already named from the Ohio River crossings.

7. Q. State whether or not the Louisville and Nashville Railroad and its connections actually and actively compete for the carriage of freight of said various classes to Atlanta; and if so, from what cities?

A. The Louisville and Nashville Railroad and its connections actually

and actively compete for the carriage of classified freight to Atlanta, Georgia, from Ohio and Mississippi river cities; also from all points in the States north of the Ohio and west of the Mississippi River; also from the points south of the Ohio and east of the Mississippi rivers which are located on and west of the Louisville and Nashville Railroad.

8. Q. Does your railroad or its connections have agents at said cities to solicit said freight for said cities to Atlanta?

A. The Louisville and Nashville Railroad and its connections have agents at the various cities and territories described for the purpose of soliciting freight destined to Atlanta.

9. Q. Does your railroad or its connections advertise at said cities for the transportation of said freight to Atlanta?

A. The Louisville and Nashville Railroad and its connections advertise, through the soliciting agents mentioned and by means of tariffs and other printed matter, in the territory described for transportation of freight to Atlanta.

10. Q. State whether the rates of freight of the various classes from New York, Philadelphia, &c., to Atlanta, are controlled to any, and if so, to what, extent by competition.

186 A. The rates of freight from New York, Philadelphia, &c., to Atlanta, Georgia, are made by coastwise steamers and sailing vessels to South Atlantic coast points, and then by rail to Atlanta. The through rates so fixed are operated by the numerous routes which actively compete with each other for the traffic. It may be said, therefore, that the rates on the classified freight from New York, Philadelphia, &c., to Atlanta are controlled entirely by competition.

11. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted. To illustrate: The short line from Chattanooga, Tenn., to Meridian, Mississippi, is via the Alabama Great Southern Railroad, the distance being 296 miles. The line of the Memphis and Charleston and the Mobile and Ohio road being 411 miles through Corinth, it is a self-evident proposition that if the Memphis and Charleston and the Mobile and Ohio road wish to compete in the handling of the traffic from Chattanooga to Meridian they can not do so at higher rates than those made by the Alabama Great Southern over the short line. The effect of this, so far as the Memphis and Charleston and its connections may be concerned, is that by reason of meeting from Chattanooga to Meridian the rates made by the Alabama Great Southern Railroad it is necessary to make on the Meridian combination to some points on the Mobile and Ohio roads near by Meridian less rates than would otherwise be applied.

Again, the rates from St. Louis to Memphis, Tennessee, all rail are made in competition with steamboat lines on the Mississippi River, the through water transportation fixing the maximum rates that can be charged by the all-rail lines. That is to say, that unless the all-rail lines meet the all-water rates they would not be able to enjoy any portion of the traffic moving from St. Louis to Memphis. The effect of this is to

make the rates to points near by Memphis on the rail lines on the Memphis combination less than they would otherwise be, thus giving local points in the vicinity of Memphis, though without direct water competition themselves, the benefit of the water competitive rates for much the greater portion of the haul.

12. Q. Were the Clyde Steamship Company and what was known as the South Carolina Railroad Company, and the Georgia Railroad and Banking Company, and the Louisville and Nashville Railroad
187 Company, and the Central Railroad and Banking Company, of Georgia, under any common control or management in 1892, or have they been since that time?

A. No, sir.

13. Q. State whether the number of tons carried one mile or the number of tons carried of freight-earning revenue or the average receipts per ton per mile, or the estimated cost of carry' one ton one mile, can either jointly or separately be used as a standard in railroad-rate making?

A. The number of tons carried one mile or the number of tons carried of freight-earning revenue or the average receipts per ton per mile or the estimated cost of carrying one ton one mile cannot be used, either singly or together, as the standard in railroad-rate making.

For example, when called upon to make a line of rates from a given point to another it is necessary to establish rates on all classes that would or could move. Having no possible means of determining the relative tonnage that might move in each class or averaging the total tonnage that might move in all classes, or of determining what proportion such tonnage under all the classes would be of the entire tonnage handled by the roads during any given period of time, the rate per ton per mile could not in any way be considered.

14. Q. Explain the basis of making rates from New York, Philadelphia, &c., to Atlanta. Are the rates which are fixed by the Georgia commission from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from New York, &c., to Atlanta, Georgia, are made by the coastwise steamers and sailing vessels to South Atlantic coast points and thence by rail to Atlanta. It will be seen by this that the rates which are fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta, being one of the factors in the combination, are and have of necessity to be taken into consideration in fixing the total rates.

15. Q. State whether the rates which are made and have been made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and thence by steamships or sailing vessels, thence by the Georgia Railroad to Atlanta, control the rates which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. It is susceptible of proof that the trunk lines and other western connections pro rate on agreed per cents the rates from Central Freight Association territory via Baltimore and other Eastern cities and thence by water to Savannah, Georgia. In other words, the trunk lines and
188 their connections on the particular business referred to, do not receive their full rates from the point of origin to Baltimore or other Eastern cities. This being true, it can reasonably be inferred that the rates from Cincinnati to Baltimore and other Eastern seaboard cities

proper would necessarily be the lowest proportions of the trunk line and their western connections would be willing to accept on business via Baltimore and other cities and thence via water to Savannah or other South Atlantic coast points.

The rates from Cincinnati to Savannah via all rail are pro rated through Atlanta, the line beyond Atlanta receiving 38.3 per cent. As they accept from Atlanta 38.3 per cent on business from Cincinnati to Savannah via Atlanta, it is perfectly reasonable to believe they would also accept the same earnings from Savannah to Atlanta on business from Cincinnati via Baltimore and water. From this presentation of the case it will be seen that, whether the competition from Cincinnati via Baltimore and other Eastern seabo'rd cities, thence by water, thence by the Georgia Railroad to Atlanta be active or dormant, the rates that have been or can be made by that route exercises a control over the rates which can be charged by the direct lines operating from Cincinnati to Atlanta.

16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross-examination by Mr. SHAVER:

1. Q. I notice that you have read from a manuscript before you your answers to the direct interrogatories. Did you, yourself, prepare those answers?

A. I did.

2. Q. How long ago did you prepare them?

A. I can not give the exact date.

3. Q. About how long ago?

A. The exact number of days I can not give—but about three weeks ago.

4. Q. You were furnished with the interrogatories for you to prepare the answers, were you not?

A. Mr. Baxter advised me that I would be expected to testify in this case.

5. Q. I asked you if you were furnished with the interrogatories before you prepared the answers?

189 A. Yes, sir; Mr. Baxter sent me the interrogatories which he desired me to answer.

6. Q. In your direct examination you named a number of lines that could be formed from New York and other Eastern cities to Atlanta. Can not all those lines be formed to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain by combination with the Georgia Railroad as the terminal carriers?

A. The lines which I enumerated in my answer to the previous direct interrogatory compete for business from New York, Philadelphia, Baltimore to Atlanta, and I am not advised as to whether or not all the lines named compete to Atlanta for business to Greensboro, Madison, Social Circle, Covington, and Conyers; but if they do, then the same combination can be made in connection with the Georgia Railroad to the points named.

7. Q. You stated that the combinations that could be formed would be in excess of the hundreds. The number is almost unlimited, if you go far enough around from the direct route, is it not?

A. Yes, sir.

8. Q. Does not the direct route or the short lines between two points fix the rate for all lines?

A. The short lines between two given rail points fixes the rate between such points, but in the case of fixing the rate from New York, Philadelphia, and Baltimore to Atlanta, I do not understand that the short rail route fixes the route in this case. The rate is fixed by water and rails.

9. Q. The rates involved in this case from New York and other Northeastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are advertised through rates, are they not?

A. It is my information that the lines from New York, Philadelphia, and Baltimore show in their tariffs rates to the points named.

10. Q. On how many railroads is Madison located?

A. Madison, Georgia, is located on the Georgia Railroad, between Atlanta and Augusta, and is reached by the Central Railroad of Georgia and the Georgia Railroad.

11. Q. How many roads reach Social Circle directly?

A. Social Circle is located on the Georgia Railroad. It is not reached by any other lines.

12. Q. You stated in your direct examination that a reduction in the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, so as to make the rates from New York and other
190 Eastern cities to those points not higher than the Atlanta rates, would not increase the business to those points, and one ground for that opinion you gave was that there was no territory surrounding those points in which they could distribute goods in competition with Atlanta, as those points had diverging lines. Has Atlanta any diverging lines to Greensboro, Madison, Social Circle, Conyers, Covington, and Stone Mountain except the Georgia Railroad?

A. Atlanta has no diverging lines to Greensboro, Social Circle, Covington, Conyers, and Stone Mountain. They are situated on the Georgia Railroad, between Atlanta and Augusta.

13. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Not necessarily so.

14. As a general rule, and in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at that point and the increase of its population?

A. Not necessarily.

15. Q. Is not the natural effect of unfavorable rates to or a discrimination in rates against a given point to injure the mercantile and other business interests of such point, and to retard or prevent its growth and prosperity?

A. My opinion is if an unjust and discriminating set of rates were established to a given point it would hurt the business at that point.

16. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a set of rates which are preferential to one of these localities and discriminatory against the other benefit the one and injure the other?

A. If two cities are situated alike, and all things being equal, and one city is given a better adjustment of rates than the other, in my opinion it would hurt the business of the other city.

17. Q. The rates from New York, Philadelphia, etc., to Madison, Social Circle on first class goods is $1.44, or was in 1892, $1.44 per hundred pounds, while the rates for the longer haul through those points to Atlanta is $1.14, making a difference of thirty cents a hundred pounds in favor of Atlanta. Do you consider that a material difference in rates?

A. The rates as you state them are correct. If the rates from New York to Madison and Social Circle were reduced to $1.14 it would be thirty cents per hundred pounds, or equal to 20 per cent, and I would consider that a material reduction.

191 18. Q. Does not Atlanta enjoy lower rates than the shorter distance surrounding points in all directions or on all roads coming into Atlanta?

A. Atlanta enjoys lower rates than the shorter distance local points on roads leading to Atlanta from Baltimore, New York, and Philadelphia.

19. Q. Does it also enjoy lower rates than intermediate points leading from Cincinnati to Atlanta?

A. No, sir; it enjoys lower rates than the local stations nearby Atlanta, say, for instance, on the Western and Atlantic railroads, going into Atlanta, but it does not enjoy a lower rate from Cincinnati than does Chattanooga enjoy from Cincinnati.

20. Q. Is it not a well-known fact that Atlanta has been built up by the railroads?

A. It is my belief that Atlanta has been benefited largely by having the benefit of so many competing railroads.

21. Q. You stated in your direct examination that the rates involved in this case from New York and other Eastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were reasonable in and of themselves, and mentioned as ground, among others, for that opinion that the traffic moves freely under those rates, and that they are lower than can be obtained by other methods of transportation. What other methods of transportation did you refer to or have in mind?

A. I had in mind other than railroads from Northeastern cities, as you term them, and also the rail and water lines from the same points.

22. Q. Did you have in mind wagon or team transportation?

A. I did.

23. Q. You also mentioned the fact, or stated it to be the fact, that in establishing the proportion of the rates by rail from the seacoast that the rates fixed by the Georgia railroad commission were taken into consideration. Does the Georgia railroad commission fix through rates on interstate commerce or any proportion of such through rates, or only rates on local traffic in the State of Georgia?

A. I stated that the rates of freight from New York, Philadelphia, etc., to Atlanta were made by coastwise steamers and sailing vessels to South Atlantic coast points and thence by rail to Atlanta, and that the

through rates so fixed were operated by numerous routes which actively compete with each other for the traffic. I do not understand that the Georgia railroad commission has the power to fix rates on inter-
192 state traffic or any proportion of such through rates. It is my information that they fix rates only within the State of Georgia.

24. Q. Are the rates from New York and other Northeastern cities for the haul through Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain to Atlanta just and reasonable in and of themselves?

A. In my opinion, the rates from New York, Philadelphia, and what you term Northeastern cities to Atlanta are just and reasonable in and of themselves.

25. Q. Would higher rates be charged from New York and other Northeastern cities to Atlanta but for competition?

A. I stated previously that the controlling factor in fixing the rate from New York, Phal*i*delphia, and Baltimore to Atlanta was the water lines to South Atlantic ports and the rail lines thence. In my opinion, that competition did not exist, the rates to Atlanta would not be as low as at present.

26. Q. Are not rates necessarily expressed in figures or numbers?

A. Yes, sir.

27. Q. Are they not the result of calculation?

A. The Louisville and Nashville Railroad does not compete for business from New York, Philadelphia, and Baltimore to Atlanta. The rate of $1.14 per hundred pounds to Atlanta was no doubt arrived at, calculating the competition of the water lines to the South Atlantic ports and the rail lines thence.

28. Q. In establishing that rate of $1.14 was not the first step to ascertain the cost of the service of carriage?

A. In my opinion, when the rate of $1.14 was established from New York to Atlanta, the question of the cost of carriage was not taken into consideration.

29. Q. In you opinion, is not the test of the reasonableness of a rate whether traffic will move under it and not be diverted from the road or line charging the rate to another road or line?

A. In judging of the reasonableness of a rate I have never taken into consideration the question of the diversion of business to competing lines.

30. Q. You consider that an immaterial matter, do you?

A. In judging of the reasonableness of a rate in and of itself I would not take into consideration the question of the diversion of the business to other lines.

31. Q. Is a rate in your opinion reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. Speaking as a representative of the Louisville and Nash-
193 ville Railroad, I have no knowledge of that company having transported property at less than the cost of transportation.

32. Q. Is that the only answer you can give to that question?

A. I would say that any line transporting business at less than the cost of transportation would be making an unreasonably low rate.

33. Q. Is not, therefore, the expense of the service of carriage an element to be considered in determining whether a rate is a reasonable rate or not in and of itself?

A. In the transportation of the immense volume of traffic of the Louisville and Nashville Railroad it is impossible to determine how much traffic would move between any two points in any class or classes, and therefore it is apparent that it is impossible to reach any definite conclusion as to what the cost of carriage would be.

34. Q. Is it, in your opinion, impossible to determine whether a given rate yields a carrier anything in excess of the cost of the service of carriage?

A. In my opinion it is impossible to ascertain the cost of the carriage.

35. Q. Does not the cost or the expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. Yes, sir.

36. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. I do not understand what you mean by "other things being equal."

37. Q. Well, the rate of speed being the same?

A. There might be a great many things taken into consideration. For instance, you might take a railroad that was five hundred miles in length with no grades and have all large trains, and the cost of carriage over that road for five hundred miles might be considerably less than the cost of carriage over a line, say, passing through a mountainous country where the trains have a less number of cars, larger engines being required, the consumption of fuel greater, and the probability of the control of such trains requiring the railroad companies to employ additional help.

38. Q. The phrase "other things being equal" was intended to cover all those features. Will it not require twice the length of time to haul a train one hundred miles that it will require to haul it fifty miles, the rate of speed being the same in both hauls?

A. Yes, sir.

194 39. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Other things being equal, yes, sir.

39½. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbeds, etc., greater the greater the length of the haul?

A. Yes, sir; but not proportionately.

40. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. Yes, sir; but not proportionately.

41. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road than on a short road?

A. Yes, sir; but not proportionately.

42. Q. All other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir; proportionately.

43. Q. You stated that the rate from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were the lowest combination on either Augusta or Atlanta. Do you mean by

that, combination of through rates to Augusta and Atlanta plus local rates on, to, or back from those intermediate stations?

A. Yes, sir; that is what I meant to convey; that the rates to the points named were the sums of the rates from New York to Augusta or New York to Atlanta, with the local rates from those points to the points named.

44. Q. Is not the expense to the carriers of strictly local hauls greater per ton per mile than for the same distance on the long hauls?

A. Yes, sir.

45. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Twenty-six years.

46. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer distance point?

A. Not to my knowledge.

195 NASHVILLE, TENNESSEE, *July 14, 1897.*

CARLTON HILLYER, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. Carlton Hillyer; 52 years; Augusta, Georgia; auditor Georgia Railroad.

2. Q. How long have you occupied your present position?

A. Since 1870; that is, twenty-seven years.

3. Q. Describe generally the nature of your duties?

A. I have charge of the accounts and statistical records of the Georgia Railroad.

4. Q. Please examine the printed statement here shown you, dated Augusta, Georgia, January 22, 1892, and purporting to be a statement prepared by C. S. Sikes, traveling auditor, under the supervision of Carlton Hillyer, auditor, and with the advisement of E. R. Dorsey, general freight agent, showing the relationship between the through and local freight business of the Georgia Railroad Company for the fiscal year ending June 30, 1891, and state under whose supervision it was prepared. State whether you gave it any examination or comparison, and if so, whether it is or is not correct, and file it as exhibit number one in this case.

A. Yes, sir; for said statement, just as any other statement involving the tonnage statistics which I may submit with these depositions, I claim substantial correctness without claiming absolute exactitude. Said statement was prepared from the books of the Georgia Railroad under my supervision. I gave it careful examination and comparison, and said statement is correct. I file it herewith.

(The statement referred to is hereto attached and marked Exhibit No. 1.)

5. Q. As I understand said statement, it shows the total tons of freight moved one mile, the total amount of revenue derived therefrom, the average rate realized per ton per mile from the freight, the local tariff freights, the through tariff freights, the total freights, the revenue which would have accrued if the local tonnage had been hauled at the through rates, and the difference or loss which would have been suffered by the Georgia Railroad had the local tonnage been hauled at the through rates. I understand the result of the statement is to show that if all the local freights had been hauled at the through rates, the amount of revenue which the companies did receive under the rates which
196 were charged would have been reduced $418,245.00 in the year ending June 30, 1891. Do I understand said statement and its result correctly? If not, please explain it.

A. Yes, sir; your understanding of it is correct.

6. Q. State what roads and how many miles of roads are represented in said statement.

A. The Georgia Railroad system have the main stem from Augusta to Atlanta, 171 miles; Athens Branch, Union Point to Athens, 40 miles; Washington Branch, Barnett to Washington, 18 miles; Macon Branch, Camak to Central Railroad Junction, 74 miles; and trackage right over the Central Railroad from the Junction to Macon, 4 miles; total, 307 miles.

7. Q. State the gross earnings, the expenses, and the net earnings of the road represented by said statement for each year since said road was leased.

A. I have prepared a statement showing that, and file the same herein as Exhibit No. 2.

(The statement referred to is hereto attached, marked Exhibit No. 2.)

8. Q. What is the cost of the road, including their terminals, represented by the statement filed as Exhibit No. 1 to your deposition?

A. The Georgia Railroad, including the main stem, Athens Branch, and Washington Branch, $4,200,000; Macon and Augusta Railroad, consolidated with Georgia Railroad, and now called the Macon Branch, $1,230,000; total, $5,430,000.

9. Q. Is the construction account of your company still open; and if not, when was it closed?

A. It was closed many years since and prior to the lease of the Georgia Railroad in 1881.

10. Q. By whom is the Georgia Railroad now operated, and in what capacity do they operate? What are the terms under which they operate it? File a statement showing the profit or loss realized by them from its operations since it has been in their charge as exhibit number 3 in this case.

A. The Georgia Railroad is now operated under the lease made to William M. Wadley, taking effect April 1st, 1881, for a term of 99 years at a rental of $600,000 per annum. At present the question as to the ownership of said lease is in litigation between the Louisville and Nashville Railroad Company and Messrs. Thomas and Ryan. A half ownership is claimed by Messrs. Thomas and Ryan, and the entire ownership is claimed by the Louisville and Nashville Co. I file said statement, marked Exhibit No. 3, showing a loss of $886,892.45 in the operations

of the Georgia Railroad from the beginning of the lease to June
197 30th, 1896. In addition to said loss, there was also paid out amounts aggregating $490,972.01 for the Athens extension of the Gainesville, Jefferson and Southern Railroad, and Union Point and White Plains Railroad, showing $1,377,864 46 as the excess of the payments over receipts.

(The statement referred to is hereto attached, and marked Exhibit No. 3.)

11. Q. Examine statement here shown you, dated Augusta, Georgia, September 23, 1896, purporting to be a statement prepared by Carlton Hillyer, auditor Georgia Railroad Company, showing the relationship between certain movements of through and local freights to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894, the amount of freight business for said year being nearest to the yearly average of business for the three years ending June 30th, 1896. Say by whom said statement was compiled?

A. It was compiled by myself.

12. Q. Say whether said statement is or is not correct?

A. It is correct.

13. Q. File said statement as Exhibit number 4, in this case?

A. I file the same herewith as Exhibit number 4.

(The statement referred to is hereto attached, marked Exhibit number 4.)

14. Q. What would the loss in revenue to the Georgia Railroad have amounted to for the fiscal year ending June 30th, 1894, if said railroad had been compelled to carry freight shipped from New York and other points east of Kansas City, destined to local stations on its main stem, at the average through rates?

A. The loss would have been $7,603.

15. Q. What would the loss in revenue to said St. Louis Railroad have amounted to for said year if it had been compelled to carry freight shipped from New York and other points east of Kansas City destined to local stations on its branches at the average through rate?

A. The loss would have been $3,571.

16. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from Augusta destined to local stations on its main stem at the average through rate?

A. The loss would have been $14,376.

17. Q. What would the loss in revenue to said railroad have
198 amounted to for said year if it had been compelled to carry freight from Augusta destined to local stations on its branches at the average through rate?

A. The loss would have been $7,375.

18. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from Augusta destined to Atlanta at the average through rates?

A. The average loss would have been $1,506.

19. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from

points west of Atlanta destined to local stations on its main stem at the average through rates?

A. The average loss would have been $15,587.

20. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight from points west of Atlanta destined to local stations on its branches at the average through rates?

A. The loss would have been $4,117.

21. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from Atlanta destined to local stations on its main stem at the average through rates?

A. The loss would have been $32,454.

22. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from Atlanta destined to local stations on its branches at the average through rates?

A. The loss would have been $4,673.

23. Q. What would the loss in revenue to said railroad have amounted to for said year if it had been compelled to carry freight shipped from Atlanta, destined to Augusta at the average through rates?

A. The loss would have been $3,580.

24. Q. What was the mile tonnage of the total through freights to, from, or through Augusta and Atlanta carried by said railroad during said year?

A. 51,205,439 ton-miles.

25. Q. What was the mile tonnage of the total local freights to, from, or through Augusta and Atlanta carried by said railroad during said year?

A. 5,367,908 ton-miles.

26. Q. What amount of revenue was received by said railroad during said year from the total local freights to, from, or through Augusta and Atlanta?

A. Said amount was $151,802.

199 27. Q. What amount of revenue would have been received by said railroad during said year if the total freight to, from, or through Augusta and Atlanta had been carried at average through rates?

A. Said revenue would have been $56,960.

28. Q. What loss of revenue would have been suffered by said railroad during said year if the total local freight to, from, or through Augusta and Atlanta had been carried at average through rates?

A. Said loss would have been $94,842.

29. Q. What loss of revenue would have been suffered by said railroad during said year if the rates from New York and other points east of Augusta to Atlanta (via Augusta) had been advanced so as to be the same as the rates from the same points of shipment to local stations on said railroad between Augusta and Atlanta?

A. Competition would have caused us to lose all or nearly all of said business, which is $27,817. I think $817 would cover said freight that we might carry, even with said increased rates, and so the loss would be $27,000.

30. Q. What loss of revenue would have been suffered by said railroad during said year if the rates from points west of Atlanta to Augusta via Atlanta had been advanced so as to be the same as the rates from the same point of shipment to local stations on said railroad between Atlanta and Augusta?

A. Competition would cause us to lose all or nearly all of said business, which is $111,722. I think $6,722 would cover said freight as we might carry, even with such increased rates, and so the loss would be $105,000.

31. Q. Examine statement here shown you, dated Augusta, Georgia, September 23, 1896, and purporting to be a statement prepared by Carlton Hillyer, Auditor Georgia Railroad Company, showing the relationship between through and local freights of the Georgia Railroad Company, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894, the amount of freight business for said year being nearest to the yearly average of business for the three years ending June 30, 1896. Say by whom said statement was compiled.

A. It was compiled by myself.

32. Q. Say whether said statement is or is not correct.

A. Said statement is correct.

33. Q. File said statement as Exhibit number 5 in this case.

A. I file statement herewith as Exhibit number 5.

200 (The statement referred to is hereto attached marked Exhibit No. 5.)

34. Q. What was the mile tonnage of through freight to, from, and through all points carried by said railroad during said year?

A. 61,094,368 ton miles.

35. Q. What was the mile tonnage of local freight to, from, or through all points carried by said railroad during said year?

A. 15,988,799 ton miles.

36. Q. What amount of revenue was received by said railroad during said year from local freights to, from, or through all points?

A. $418,531.74.

37. Q. What amount of revenue would have been received by said railroad during said year if local freight to, from, or through all points had been carried at average through rates?

A. Said revenue would have been $131,108.15.

38. Q. What loss of revenue would have been suffered by said railroad during said year if local freight to, from, or through all points had been crrried at average through rates?

A. Said loss would have been $287,423.59.

39. Q. Examine the statement here shown you, dated Augusta, Georgia, September 23rd, 1896, purporting to be a statement prepared by Carlton Hillyer, auditor of the Georgia Railroad Company, showing the percentage of first-class freight as compared with total freights in certain movements of freight to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894, the amount of freight business for said year being nearest to the yearly average of business of the three years ending June 30, 1896. Say by whom said statement was compiled.

A. It was compiled by myself.

40. Q. Say whether said statement is or is not correct.

A. Said statement is correct.

41. Q. File said statement as Exhibit number 6 in this case.

A. I file the same herewith as Exhibit number 6.

(The statement referred to is hereto attached and marked Exhibit number 6.)

42. Q. Say whether or not said statement shows correctly the percentage which the miles tonnage of the first-class freight to, from, or
201 through Augusta and Atlanta bore to the mile tonnage of all freights to, from, or through Augusta and Atlanta and the subdivision thereof during said year.

A. Yes, sir; it does.

43. Q. How did the freight business of said railroad for said year compare with the average freight business of said road for the three years ending June 30th, 1896?

A. It was very near the average, and it is nearer the average than either of the two other years.

44. Q. How does the aggregate mile tonnage of all classes of freight shipped from New York and other points east of Augusta, delivered to the Georgia Railroad at Augusta and destined to stations between Augusta and Atlanta, compare with the miles tonnage of all classes of freight shipped from the same points and deliver to said railroads at Augusta destined to Atlanta and points west of Atlanta?

A. Said Eastern tonnage to Atlanta and beyond is five times as great as said Western local tonnage to stations on the main stem and branches.

45. Q. How does the mile tonnage on first-class freight shipped from New York and other points east of Augusta, delivered to said railroad at Augusta and destined to stations between Augusta and Atlanta, compare with the mile tonnage of all classes of freight shipped from the same points delivered to said road at Augusta and destined to same stations?

A. Said Eastern first-class local tonnage to stations on the main stem is only 1.85 per cent of the said local Eastern tonnage to said stations, and to stations on the branches it is only 2.04 per cent.

46. Q. How are the rates from New York, Philadelphia, etc., via Charleston to Augusta divided between connecting carriers?

A. They are divided on the basis of mileage. The steamers are allowed a constructive mileage of 250 miles; the South Carolina and Georgia Railroad is allowed 138 miles, making a total of 388 miles.

From New York and Philadelphia to Augusta the percentages are:

Steamers	64.4 per cent.
South Carolina and Georgia Railroad	35.6 per cent.
Total	100.0 per cent.

202 47. Q. How are the rates from New York, Philadelphia, via Charleston and Augusta, to Atlanta divided between the connecting carriers?

A. On the basis of mileage. The steamers are allowed a constructive mileage of 250 miles; the South Carolina and Georgia Railroad is allowed 138 miles and the Georgia Railroad 171 miles, making a total of 559 miles.

From New York and Philadelphia to Atlanta the percentages are:

Steamers	44.7 per cent.
South Carolina and Georgia	24.7 per cent.
Georgia	30.6 per cent.
Total	100.0 per cent.

48. Q. How does the freight business of the Georgia Railroad for the fiscal year ending June 30th, 1894, compare with the freight business of said company for the fiscal year ending June 30th, 1892?

A. Said freight business for the year ending June 30, 1894, was less by $127,015 than said freight business for the year ending June 30th, 1892.

49. Q. Please examine the statement here shown you, headed: "Fixed and obligatory charges. Statement showing the amount of taxes paid by the Georgia Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ending June 30th, 1896. The taxes here shown were charged to operating expenses, and hence the statement of income shows the net after the taxes have been paid." Say who compiled said statement and whether it is correct.

A. Said statement was compiled by myself and it is correct.

50. Q. Please file it as "Exhibit number 7," in this case.

A. I file the same herewith as "Exhibit number 7."

(The statement referred to is hereto attached marked "Exhibit number 7.")

51. Q. Please examine the statement here shown you, headed: "Fixed and obligatory charges. Statement showing the interest on bonds and other charges paid by the Georgia Railroad on account of the Gainesville, Jefferson and Southern Railroad and the Union Point and White Plains Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30, 1896. The amount here
203 shown are claims against said roads." Say by whom said statement was compiled, and whether or not it is correct.

A. Said statement was compiled by myself and it is correct.

52. Q. Please file it as Exhibit number 8 in this case.

A. I file the same herewith as Exhibit No. 8 in this case.

(The statement referred to is hereto attached and marked Exhibit number 8.)

53. Q. Please examine the statement here shown you, headed: "Augusta, Georgia, June 14, 1897. Statement showing amounts expended by Georgia Railroad on improvements in road and equipments from beginning of lease, April 1, 1881, to the close of the fiscal year ended June 30, 1896. The amounts here shown was charged to operating expenses, and hence the statement of income shows the net after the payments of these amounts." Say by whom said statement was compiled, and whether or not it is correct.

A. Said statement was compiled by myself and is correct.

54. Q. Please file the same as Exhibit number 9 in this case.

A. I file the same herewith as Exhibit number 9.

(The statement referred to is hereto attached marked Exhibit number 9.)

55. Q. Please examine the statement here shown you, headed: "State-

ment showing total Georgia Railroad freight revenue and mile tonnage of freight earning revenue, carried by the Georgia Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896." Say by whom said statement was compiled, and whether or not it is correct.

A. Said statement was compiled by myself and is correct.

56. Q. Please file the same as Exhibit number 10 in this case.

A. I file the same herewith as Exhibit number 10.

(The statement referred to is hereto attached and marked Exhibit number 10.)

57. Q. Please examine statement here shown you, headed: "Statement showing yearly averages of revenue expenses, tons, trains, and miles for Georgia Railroad freight business as per reports to the Interstate Commerce Commission, from the beginning of said reports, 1888, to the close of the fiscal year ended June 30th, 1896?

204 freight train mile for the years during which the rules for computing the same were in operation."

Say by whom said statement was compiled, and whether or not it is correct.

A. Said statement was compiled by myself and is correct.

58. Q. Please file the same as Exhibit number 11 in this case.

A. I file the same herewith as Exhibit number 11.

(The statement referred to is hereto attached marked Exhibit number 11.)

59. Q. I notice from the last mentioned statement, Exhibit number 11, that the estimated cost of carrying one ton one mile in cents and the estimated cost of running a freight train one mile are reported for the years 1888, 1889, 1890, 1891, 1892, and 1893, but they are not reported for the subsequent years. Why is that so?

A. The Interstate Commerce Commission, in the earlier reports required from the railroads, laid down certain rules for separating the expenses of freight business from the expenses of the passenger business. After considerable conference with the executive committee of the Association of the American Railway Accounting Officers, the Interstate Commerce Commission has decided that any exact separation of the expenses for the freight traffic and the expenses for the passenger traffic is not practicable. From and after 1894 the Interstate Commerce Commission has not required any such separation, nor any report separately of the cost of the passenger traffic and freight traffic.

60. Q. I notice that in said statement the cost of carrying one ton one mile and the cost of running a freight train one mile are both stated to be estimated. Explain how that estimate was made during the time that the commission required the estimates to be made.

A. Said rule laid down by the Interstate Commerce Commission required that all items naturally chargeable to the freight expenses shall be so charged, and that all other items of expense shall be apportioned between freight and passenger expenses on the basis of the ratio between passenger train mileage and freight train mileage. In this calculation mixed train mileage is distributed on the basis of one-fourth for the passenger business and three-fourths for the freight business.

61. Q. If I understand you correctly, the plan of distributing the

business between the freight and passenger business as indicated in your last answer has been abandoned by the Commission since 1894?

A. It has.

205 62. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not know of anything else.

Cross-examination by Mr. SHAVER:

1. Q. Were not these 11 exhibits to your answers to the direct interrogatories prepared with especial reference to interstate-commerce cases?

A. They were.

2. Q. You say that the data in those exhibits were compiled by you. Compiled from what?

A. Mostly from the books of the company.

3. Q. Are those books kept by you?

A. They are.

4. Q. Do you personally make the entries in those books?

A. No, sir; except in some isolated cases. As a rule, no, sir.

5. Q. Those entries, as a rule, are made by other employees of the road?

A. They are.

6. Q. How do you get the data on which they base those entries?

A. From the way bills, ticket reports, agents' reports, vouchers, and other papers reaching my office in the course of business.

7. Q. Do you personally inspect those way bills, etc., to which you refer, very often?

A. I have occasion to do so, but I, of course, do not inspect all of them.

8. Q. The rule is that you do not?

A. Yes, sir; the rule is that I do not.

Counsel for the Commission moves to exclude as evidence each of these 11 exhibits on the ground that they are irrelevant and based on hearsay, and otherwise incompetent and illegal.

9. Q. As a general rule, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Wherever definite new industries are about to be established my observation has been that increased tonnage can be secured by a

206 reduction in the rate to and from the stations where said industries are located on such articles as may be produced or consumed by such industries. Indiscriminate and widespread reductions in rates do not, so far as I have been able to see, make any increase in the amount of tonnage. The revenue lost to the roads by reduction seems to go into the pockets of the producer, merchants, and consumers. From a railroad point of view it is so much money thrown away, as a rule.

10. Q. As a general rule, is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such points and the increase of its population?

A. I think so, sir; providing the reduction is intelligently applied to such articles of freight whose movements can be encouraged in that way.

11. Q. If it applied to all the classes of freight as classified, would it not include such articles?

A. It would; but the loss to the road on other articles would have a tendency to overcome any increase in the articles thus fostered.

12. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discrimatory against the other benefit the one and injure the other?

A. I think that in such a case the locality enjoying the better rates is benefitted to the exclusion of the other.

13. Q. Do not Atlanta merchants trade at Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and in the territory adjacent in competition with the local merchants at those points?

A. I think they do. Just at present, I am not sure to what extent consumers deal directly with Atlanta merchants.

14. Q. If the rates to Madison, Social Circle, Covington, Conyers, and Stone Mountain were so reduced as to make them not higher than the rates for the longer haul through those points to Atlanta, would not this enable local merchants at those shorter distance points to compete more successfully with the merchants at Atlanta for business at those points and in the territories adjacent?

A. It would.

15. Q. Do not rates enter into and affect the prices of goods?

A. Yes, sir; to a much greater extent, however, upon some classes of goods than others.

207 16. Q. Do not, therefore, lower rates tend to bring about lower prices?

A. They do.

17. Q. Do not lower prices of goods bring those goods within the reach of more people and thus tend to increase the consumption of such goods?

A. It brings them within the reach of more people, provided the income obtained by said people is also not reduced.

18. Q. Does not the prosperity of a road depend more upon the prosperity of the local stations along its entire line than on that of a few widely separated trade centers or competitive points?

A. I think that roads differ very greatly in that respect. Some roads depend more largely upon their through business than others.

19. Q. Would it not be better policy for a road to have a system of rates which encouraged the growth and promoted the prosperity of the local stations along the entire line than a system of rates which is preferential to a few widely separated trade centers or competitive points, and discrim'atory against local stations?

A. I think the policy would depend upon the situation of the particular road. It would be a fortunate thing for any road to have a large local business.

20. Q. In a number of the 11 exhibits to your answers to the direct interrogatories, you stated certain losses which would accrue to the roads if the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were reduced so as not to be higher than the competitive rates to Atlanta. In estimating those losses, did you take into

consideration the fact that the tonnage of traffic to those intermediate shorter distance points might be increased by making the rates to those points as low as the Atlanta rates?

A. No, sir; I did not take such a possibility into consideration.

21. Q. You also stated that if the rates to Atlanta were advanced so as to make them as high as the rates to the shorter distance points, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, that it would result in the diversion of traffic from the line involved in this case. Now, if the rates from New York and other Eastern cities to Atlanta over the lines involved in this case were advanced so as to make them not less than the rates charged to intermediate points, Greensboro, etc., and the rates on all the other lines from New York and Eastern cities to Atlanta were also advanced, would there result
208 any diversion of traffic from the line involved in this case to such other lines?

A. If the rates over the other lines were also advanced precisely in in such a way as to correspond with the advances on our line, it would not result in a loss of business to us.

22. Q. If the rule that there shall be no greater charge for the shorter than the longer haul, over the same line, in the same direction, the shorter being included in the longer, were observed by all the roads or lines from a given point to a given point, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of the traffic and prevent diversion of its traffic over other roads or lines?

A. Assuming that the rates were nicely and accurately adjusted in that way, I do not think it would prevent the shortest line and the line having the best service from carrying the largest part of the business, regardless of the rates.

23. Q. Is not your opinion just and proper that the shortest line and the best line should control the traffic?

A. Yes, sir; it is.

24. Q. The rates involved in this case from New York, Philadelphia, and other Eastern cities to Atlanta were, in 1892, as follows:

Classes.												
1	2	3	4	5	6	A	B	C	D	E	H	F
111	98	86	78	60	49	36	48	40	39	58	58	78

Were they not?

A. Yes, sir; those were the rates.

25. Q. Are those rates, in your opinion, just and reasonable in and of themselves?

A. Certainly in my experience and work I have no means of deciding whether a rate is just and reasonable within itself, assuming that such a term could be properly employed in speaking of a rate. So far as I am able to judge, however, the said rates are reasonable.

26. Q. Is a rate reasonable, in your opinion, which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. In many cases it is altogether reasonable. After the expenditures have all been incurred and paid which are necessary for the running of a road, all additional freight carried is so much profit and in a certain sense might be carried regardless of the exact rate.

27. Q. If the carriage of this additional freight costs more than the revenue received by the road for the service of carriage, would those rates be reasonable?

A. If a certain quantity of additional freight actually and positively does entail an additional expense greater than the revenue on the same, then said additional freight is not profitable; but it is impossible to separate the exact cost of carrying any particular movement of freight from the cost of carrying the entire freight.

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28. Q. If roads transport freight at less than the actual cost of the carrying of that freight, must not their financial operations necessarily result in loss?

A. Yes, sir; if the total cost of transporting all freight is greater than the total revenue on all freight, such would be the case, provided we could leave the passenger business out of consideration. Some roads have a larger passenger business in proportion to their freight business.

29. Q. If the revenue derived from the rates on certain classes is less than the actual cost of service in the transporting of the traffic, must not the operations of the road, so far as that traffic is concerned, result in loss?

A. So far as that particular traffic is concerned, yes; but the same service would in most cases be employed to transport other traffic.

30. Q. I referred to additional cost of transporting this particular traffic.

A. Yes; assuming that any such separation of the cost of the service for the particular traffic is practicable, such carriage of freight would entail a loss for that traffic.

31. Q. Do the rates which I have named from New York and other Eastern cities to Atlanta pay the roads anything in excess of the actual cost of carriage of that freight to Atlanta?

A. To answer that question it would be necessary to assume that there is a practical rule for showing the cost of transporting freight per ton per mile. Neither the accountants nor the Interstate Commerce Commission have been able to devise a method by which such cost of transportation can be shown.

32. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. Those considerations must enter into the question of making the rate, but no definite figures in regard to them can be conclusive so as to settle the question as to whether the rates should or should not be made.

33. Q. Does not the cost of the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir; it does.

34. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

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A. It is.

35. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

36. Q. Other things being equal, is not the wear and tear on locomotives, cars, tracks, roadbeds, etc., greater the greater the length of the haul?

A. Yes, sir; it is.

37. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. It is.

38. Q. Does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. It does; but the ratio of said expenses to the length of the road is greater upon the short lines than the long one.

39. Q. Greater per mile?

A. Greater per mile.

40. Q. But not greater in the aggregate?

A. Not greater in the aggregate; greater per mile.

41. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital, greater the greater the length of the road?

A. It is.

42. Q. Is it your opinion that the financial condition of a road is a test or should be a test of the reasonableness of the rates charged by it?

A. No, sir.

I think it furnishes only one element for testing the reasonableness of the rate. I know roads which are located in a sparsely settled and unprofitable country, whose business is dependent upon the quantity of business in that territory and can not be influenced greatly by the rates.

43. Q. Those are exceptional cases, are they not?

A. Well, considerations of that sort enter so largely into the business of roads that the principal may be considered as applying to all except roads in prosperous centers.

44. Q. Is not the real test of the reasonableness of rates the value of the service and whether they yield the carrier a proper remuneration over and above the expense of the service?

A. Yes, sir; that is a fair test.

45. Q. Would not that be a fair test without reference to the financial condition of the road or whether its business was a paying business or not on the whole?

211 A. If the freights yield remunerative rates then its business would be a paying business.

46. Q. It might have so little business paying rates that its entire operations might result in loss, might it not?

A. Yes, sir; and that is what I had in mind a few moments ago when I spoke of a road whose business could not be profitable by any arrangement of rates, on account of its unfavorable situation.

47. Q. Running through a sparsely settled country, I think you said?

A. Yes, sir.

48. Q. Is that the condition of the Georgia Railroad?

A. No, sir, except to a partial extent as regards some of its branches.

49. Q. Are not the rates from New York and other Eastern cities to Greensboro, Madison, Social Circle, Covington, and Stone Mountain made up by combination of through rates to Atlanta plus local rates?

A. Yes, sir, they are. The rate is made up of a combination basing on the nearest competitive points up to the local stations.

50. Q. Either Augusta or Atlanta?

A. Either Augusta or Atlanta.

51. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than for the same distance on long through hauls?

A. Yes, sir, it is much greater.

52. Q. How long have you been engaged on the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. For 27 years.

53. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer distance point?

A. No, sir. So far as I can see and remember, it has been competition which has caused a greater charge for a shorter haul. I am not sure, however, just now that there might not be other causes connected with water transportation, or shortness of the route, or situation of the road, which might in some cases have produced such a result.

54. Q. But you have no personal knowledge of such cases in that territory?

212 A. I do remember that in the case of the Rome Railroad, extending from Kingston to Rome, said road being usually short, and on account of its having a terminus at Kingston and the terminus at Rome an arbitrary proportion was allowed to said road much greater than it would be entitled to by its actual mileage.

55. Q. Did that result in a greater charge for a shorter than a longer haul over the line of that road?

A. It consisted in the manner of dividing the through rates between the carriers. I do not know whether it ought properly to be called a greater charge for a shorter distance or not; but I suppose so.

56. Q. Did that road make any greater charge for a point intermediate between Kingston and Rome than for the haul from Kingston to Rome?

A. I, of course, do not know what their local rates were, but it is probable that they followed the same principle as to local rates on other roads in that particular.

57. Q. Would that not be the result of competition at Rome?

A. It would.

58. Q. Are you familiar with the practice in the eastern territory and in the trunk line territory north of the Ohio River as to making the greater charge for the shorter than the longer haul over the same lines in the same direction, the shorter being included in the longer?

A. No, sir; I am not familiar with that.

Redirect examination by Mr. BAXTER:

1. Q. How many different books are required in your office to keep the accounts and statistics of the Georgia Railroad?

A. A very large number. Of course we have books extending over a period of years. I do not happen to have estimated that precisely by counting the exact number of volumes. They are very numerous, however.

2. Q. Could you give a rough estimate?

A. Yes, sir. You mean accounts as well as statistics?

4. Q. Yes, sir; accounts and statistics is my question.

A. I would say at present at least 75 volumes.

5. Q. And how many waybills, bills of lading, vouchers, agents' reports, and other papers have to be examined daily in your office in order to keep the accounts and statistics of the Georgia Railroad?

213 A. Of course the quantity differs at different periods of the year, but as a rough estimate, I would say as an average 2,000 of such papers per day.

6. Q. How many clerks or other assistants do you have in your office to assist in the keeping of such accounts and statistics?

A. 23 besides myself.

7. Q. Are those clerks assistants under your personal supervision and control?

A. They are.

8. Q. Is it practicable for you or any other one man to keep all of the accounts and statistics of your road?

A. It is not.

9. Q. Is it practicable for the lines operating between New York and Atlanta to advance the rate from New York to Atlanta and maintain them, so as to be as high as the rates charged from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. I do not think it is practicable to do that.

10. Q. Why not?

A. I know of no authority to enforce it even if it were possible to make the exact adjustment on classification and rates, which would be necessary in order to avoid any possible case under which freight would be hauled for a longer distance at a less rate.

11. Q. What is the rate on first class from New York to Social Circle or Covington?

A. To Social Circle the rate on first class is $1.44 per hundred pounds from New York via Charleston.

12. Q. Now, suppose the rate from New York to Atlanta should be made $1.44, would it not be cut by the ocean rate to South Atlantic points plus the Georgia railroad commission rate to Atlanta?

A. It would.

16. Q. What is the average capacity of freight locomotives on the Georgia Railroad, measured in full loaded freight cars?

A. The average number of loaded freight cars which we carry in a train in actual service is about nine.

14. Q. My question was as to the average capacity—how many your engines could pull?

A. It of course depends upon the capacity of the cars, because said

capacity varies greatly, and I do not think there is any authoritative number of cars mentioned among railroad men as being at present the capacity of one of our engines; but, speaking in general terms, I would say that the engines on our roads would be able to haul at least 18 or 20 loaded cars.

15. Q. Now, if the average freight locomotive on the Georgia
214 Railroad can haul, say, 18 fully loaded freight cars, and the average number of fully loaded freight cars which are actually carried in the freight train on that road is only nine, could not that company afford in each of its trains to pull at least an average of nine fully loaded cars at a very much less additional cost than it would have to charge for the nine cars which it finds to be the representative of its average traffic?

A. It could.

NASHVILLE, TENN., *July 14, 1897.*

JAMES R. THOMPSON, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. James R. Thompson; 43 years old; Atlanta; with the Southeastern Freight Association.

2. Q. State whether you were connected with the Southern Railway and Steamship Association and afterwards with its successor, the Southern State Freight Association; and if so, in what capacity.

A. Yes, sir; I was clerk in the statistical department.

3. Q. In both associations?

A. Yes, sir.

4. Q. Please examine the statement here handed you headed "Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893." State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

A. Yes, sir; I compiled it from the records of the Southern Railway Association.

5. Q. If you say you compiled said statement as aforesaid, state whether you compiled it correctly and filed it as Exhibit number 12 in this case?

A. Yes, sir; I compiled it correctly from the records and I file it herewith as Exhibit number 12.

(The statement referred to is hereto attached, marked Exhibit No. 12.)

6. Q. State whether the figures under the head of "Weight" refer to pounds or tons.

A. Pounds.

7. Q. Please examine the statement headed "Classified statement of tonnage from points on and beyond the Ohio and Mississippi
215 rivers and from and via Lexington, Kentucky, and from Nashville, Tennessee, Johnsville, Tennessee, and Florence, Sheffield, and Riverton, Alabama, to Atlanta, Georgia, during the year ended March 31st, 1893." State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

A. I did; and it is correctly compiled, from the records.

8. Q. File said statement as Exhibit No. 13 in this case.

A. I file the same herewith.

(The statement referred to is herewith attached, marked Exhibit number 13.)

9. Q. State whether the figures in the body of said statement refer to pounds or tons.

A. Pounds.

10. Q. Under the heading of "Lines" there appear certain initials. Give the names in full of the railroads referred to by said initials.

The Louisville and Nashville Railroad.
The Cincinnati Southern Railway.
The Louisville Southern Railroad.
The Newport News and Mississippi Company.
The Ohio Valley Railroad.
The Alabama Railroad.
The Illinois Central Railroad.
The Mobile and Ohio Railroad.
The Nashville, Chattanooga and St. Louis Railway.
The Memphis and Charleston Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Yazoo and Mississippi Valley Railroad.
The Georgia Pacific Railway.
The Alabama and Vicksburg Railway.
The New Orleans and Northeastern Railroad.
The Birmingham, Sheffield and Tennessee River Railway.
The Richmond and Danville Railroad.

11. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at length in your answer.

A. I do not know that I can.

Cross-examination by Mr. SHAVER:

1. Q. What relation did you say you sustained to the Southern Railway and Steamship Association?

216 A. I was a clerk in the statistical department.

2. Q. For how long and during what period?

A. I have been with them for nearly ten years. The Southern Railway and Steamship Association, the Southern States Freight Association, and the Southeastern Freight Association.

3. Q. Was the Southern Railway and Steamship Association in existence during 1892?

A. Yes, sir.

4. Q. Did you compile the data that is in the two exhibits, numbered 12 and 13, presented by you in your direct examination?

A. Yes, sir; I took them from the association's records. Of course I did not get up all those statements, but I did that from the printed records.

5. Q. From the records of the Southern States Freight Association?

A. Yes, sir.

6. Q. When did that association come into existence?

A. I could not tell you the exact year. I could get it for you at the office.

7. Q. Did not the Southern Railway and Steamship Association cease to exist in 1895?

A. Two years ago that would be. That is just about the time.

8. Q. These statements—Exhibit numbers 12 and 13 to your answer—purport to contain data for the year which ended March 31, 1893.

A. Yes, sir; that was taken from the Southern Railway and Steamship Association's records.

9. Q. And not from the records of the Southern States Freight Association?

A. They are just one. One went into the other. In 1893 it was the Southern Railway and Steamship Association, and we were working under the Southern States Freight Association when they were made, but afterwards they were taken from the records of the Southern Railway and Steamship Association.

10. Q. You have no personal knowledge of the accuracy of the data contained in either of these exhibits, have you?

A. Yes, sir; I helped get it up from the billing—taken from the billing of the railroads sent to us every day. Now, that Western statement I helped get up from the billing. The Eastern statement I took from the records after it was gotten up.

Counsel for the Commission moved to exclude Exhibit number 12 and 13, on the ground that they are irrelevant, based on hearsay, and otherwise incompetent and illegal.

11. Q. Will you please examine this document and state
217 whether it is the agreement of the Southern States Freight Association made the third day of October, 1895?

A. I could not tell you by just reading that, but I could not swear to it. I do not know anything about that.

12. Q. What is your relation to that association?

A. I am just a clerk.

13. Q. And you can not identify that as an agreement of that association of that date?

A. No, sir; I could not say that was it. I can only say what is before me there—I could not prove it.

Mr. BAXTER. Exhibits numbered 14 and 15 presented to the witness by counsel for the commission are agreed to by counsel for the defendants to be correct copies of the agreement, which they purport to be.

(The agreements above referred to are hereto attached, marked Exhibits Nos. 14 and 15.)

Redirect examination by Mr. BAXTER:

1. Q. How were the statistics contained in Exhibits numbered 12 and 13 to your deposition obtained by the Southern Railway and Steamship Association? From whose records were they compiled?

A. It was taken from the billing that was sent in by all the railroads to our office on all competitive buisness.

2. Q. Did each of the railroad companies that was a member of the Southern Railroad and Steamship Association send into that association copies of all its billing for transportation of competitive freight?

A. Yes, sir.

3. Q. And it was from those bills that those statistics were originally compiled by the association?

A. Yes, sir.

4. Q. How many of those bills, on an average, do you suppose were received by the association daily—rough estimate?

A. I suspect we get about two or three thousand bills a day.

5. Q. How many clerks were required to compile the statistics for those bills?

A. Fourteen, I think, in our department.

6. Q. Did you get bills from any railroad companies that were not members of the association?

A. I do not think we did.

Recross-examination by Mr. SHAVER:

218 1. Q. All those companies named on Exhibits 12 and 13 were members of the Southern States Freight Association?

A. Yes, sir.

2. Q. And you said that that data was taken from the record of the Southern Railway and Steamship Association?

A. Yes, sir.

3. Q. Those roads were also members of the Southern Railway and Steamship Association, were they not?

A. Yes, sir; I think they were.

Redirect examination by Mr. BAXTER:

1. Q. The Southern States Freight Association succeeded the Southern Railway and Steamship Association, did it not?

A. Yes, sir.

2. Q. And all the records of the latter were turned over to the former?

A. Yes, sir.

3. Q. What association succeeded the Southern States Freight Association?

A. The Southeastern Freight Association.

4. Q. Were all the records of the Southern States Freight Association turned over to the Southeastern Freight Association?

A. Yes, sir; at least, I suppose they were. We have all of them. We kept them. It is exactly the same thing and has another name. It is not the same altogether.

5. Q. Are all the roads which are named in Exhibits Nos. 2 and 3 members of the Southeastern Freight Association?

A. No, sir.

NASHVILLE, TENN., *July 15, 1897.*

JOSEPH M. BROWN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. Joseph M. Brown; 42nd birthday; my personal residence is Marietta, Georgia; my official residence, Atlanta, Georgia; occupation, traffic manager of the Western & Atlantic Railroad Company.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. Since the 1st day of January, 1887. I went into the service as freight clerk, and filled a number of subordinate positions, as
219 freight conductor, lost-car agent, and as inspection agent here at Nashville, claim agent, car accountant, general freight agent, general freight and passenger agent, and traffic manager.

3. Q. In this case the Interstate Commerce Commission ordered the defendant to desist from charging for the transportation of like kind of property from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain and Atlanta were, as shown by the report and opinion of the Commission in 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, so as to make up for any loss of revenue that would otherwise result. Give your reasons for any opinion you may express.

A. I do not think the reductions in the rate to the points mentioned will have the effect of increasing the movement of traffic to any material extent. Whatever increase of the business would come to the railroad could not be commensurate with the loss of revenue which the railroad would sustain by reason of the reductions mentioned in your question. The reductions, while a material item to the railroad, is not noticeable when distributed among various consumers and would not, therefore, act as an inducement to them to purchase beyond their regular needs.

220 4. Q. State whether the rates from New York, Philadelphia, etc., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just or unjust, reasonable or unreasonable, and give your reason for any opinion you may express.

A. I think that the rates shown in the question before this are just and reasonable. They are fixed on the basis of the through rates to Atlanta and Augusta, plus the local rates therefrom. Through rates to the aforesaid basing points are fixed with relation to the various circumstances and conditions which pertain in the movement of traffic to competitive points. The local rates of the Georgia Railroad prescribed by the railroad commission of Georgia are what are termed by the Georgia

board "standard rates." Only three roads in the State use standard rates, the Western and Atlantic Railroad, the Rome Railroad, and the Georgia Railroad, all other lines applying higher rates.

5. Q. State what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, etc., in transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines competed in 1892 and now compete from Eastern cities for the transportation of freight governed by class 1 to H, inclusive, to Atlanta:

The Pennsylvania Railroad.
The Baltimore and Ohio Railroad.
The Western Maryland Railroad.
The Cumberland Valley Railroad.
The Philadelphia and Reading Railroad.
The Richmond and Danville Railroad (now called the Southern Railway.)
The Atlantic Coast Line.
The Georgia Railroad.
The Seaboard Air Line.
The East Tennessee and Virginia Railroad (now called the Southern Railway).
The Old Dominion Steamship Company.
The Ocean Steamship Company.
The Clyde Line.
The Merchants and Miners' Transportation Company.
The Bay Line.
The Mallory Line.
The Central of Georgia Railroad.
The South Carolina and Georgia Railroad.

6. Q. State what lines actually and actively competed in 1892
221 and now compete from Ohio River points and sections of the country other than New York, Philadelphia, etc., in transportation to Atlanta of freight classified as above.

A. The Louisville and Nashville Railroad.
The Nashville, Chattanooga and St. Louis Railway.
The Cincinnati, New Orleans and Texas Pacific Railway.
The Louisville Southern.
The Mobile and Ohio Railroad.
The Memphis and Charleston.
The Illinois Central Railroad.
The Ohio Valley Railroad.
The Newport News and Mississippi Valley Company.
The East Tennessee and Georgia (now called the Southern Railway).
The Western and Atlantic Railroad.
The Chattanooga, Rome and Columbus Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Georgia Pacific (now the Southern).
The Yazoo and Mississippi Valley.
The New Orleans and Northeastern Railroad.
The Port Royal and Augusta (now called the Charleston and Western Carolina).

The Savannah, Florida and Western (that is now termed the Plant System).

The Brunswick and Western (now included in the Plant System).

The South Carolina (now the South Carolina and Georgia).

The Charleston and Savannah (now included in the Plant System).

The Atlantic Coast Line.

The Richmond and Danville (now part of the Southern Railway).

7. Q. State whether or not the Western and Atlantic Railroad and its connections actually and actively compete for the carriage of freight of said various classes to Atlanta; and if so, from what cities.

A. The Western and Atlantic and its connections actually and actively compete for the carriage of freight classified from 1 to 8, inclusive, to Atlanta from Ohio and Mississippi river points and points north and west thereof.

8. Q. Does your railroad or its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. The Western and Atlantic Railroad have agents at Cincinnati, Memphis, Cairo, and Chicago. The connections of the Western and Atlantic have representatives at several of the principal northern
222 and western trade centers. They solicit freight covered by classes 1 to 8, inclusive, for transportation to Atlanta.

9. Q. Does your railroad or its connections advertise at said cities for transportation of said freight to Atlanta?

A. The Western and Atlantic Railroad advertises at Cincinnati, Memphis, Cairo, and Chicago for the carriage of freights to Atlanta. The connections of the Western and Atlantic at the cities where agencies are established advertise for the carriage of freight to Atlanta.

10. Q. State whether the rates on freight of the various classes from New York, Philadelphia, etc., to Atlanta are controlled to any, and if so, to what extent by competition.

A. The rates from New York, Philadelphia, etc., to Atlanta are controlled by competition. It is the competition between the all-rail and the rail-and-water lines, competition of markets, producing and consuming, as well as competition of products, which exert considerable influence in the adjustment of rates.

11. Q. I said competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. The competition between rail and water carriers substantially affects the circumstances and conditions under which the transportation of freight is conducted.

12. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain as is sufficient to affect the rates charged by the lines from New York, Philadelphia, etc., via Charleston and Augusta.

A. There is no competition at Greensboro, Social Circle, Conyers, and Stone Mountain; at Madison and Covington there is slight competition, but not of the nature that exists at Athens, Atlanta, or Augusta.

13. Q. Were the Clyde Steamship Company, or what was formerly known as the South Carolina Railroad Company, and the Georgia Railroad and Banking Company, and the Louisville and Nashville Railroad

Company, and the Central Railroad and Banking Company of Georgia under any common control or management in 1892, or have they been since that time?

A. The lines you mention were not under any common control or management in 1892, nor have they been since that time.

14. Q. Explain the basis of making rates from New York, Philadelphia, etc., to Atlanta. Are the rates fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. Since about 1870 the rates from New York, Philadelphia, etc., to Atlanta have been the subject of more or less consideration by
223 the carriers interested. The records of the Southern Railway and Steamship Association show that in August, 1892, a basis for fixing rates from Eastern cities to Atlanta was agreed upon. The two factors used in determining the rates were the figures of the coastwise steamship lines plying from New York to Savannah plus the figures from Savannah to Atlanta, which are practically the rates of the railroad commission of Georgia. The lapse of time has in a measure varied slightly the foregoing, but in the main the basis of 1882 is still in effect. The rates from New York, Boston, and Philadelphia were made the same as New York. Competition of markets, carriers, and products brought this about. Baltimore rates were made differentials less than New York. These differentials ranged from seven cents on the first class to one cent on the lowest class. The rates of the railroad commission of Georgia from the Georgia coast cities to Atlanta play an important part in adjustment of rates from Eastern points. Shipments have been made and can be made from Cincinnati to Atlanta via the route indicated in the question without through bills of lading. They take a schooner to Brunswick and then apply the Georgia commissioner's local rates to Atlanta. That is done very frequently. The rates are made to Atlanta that way.

15. Q. State whether freight has been and can be carried from Cincinnati, Ohio, to Baltimore, Maryland, and other Eastern cities via the trunk lines, and thence by independent steamships or sailing vessels to Southern ports, and then to Atlanta by railroad wholly within the State of Georgia, and whether such shipment has been made and can be made without issuing through bills of lading?

A. Rates which have been made and can be made by the trunk lines from Cincinnati to Atlanta via the route indicated in your question are in a measure potent in fixing the rate by the direct all-rail lines from Cincinnati to Atlanta.

Quite a notable instance of how the direct all-rail rates are affected by Baltimore and Southern coast competition was shown in the movement of cotton ties from Pittsburg to interior Georgia points, including Atlanta, within the past few months. There was a very low rate made by the trunk lines to Baltimore and the Merchants and Miners' Company made a very low rate to Savannah, which, added to the Georgia railroad commissioner's rate to Atlanta, *but* the established rates from Pittsburg via Cincinnati to Atlanta several cents.

16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause,

or either of them, or that may be material to the subject of this
224 your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I know of nothing else material to this issue.

Cross-examination by Mr. SHAVER:

1. Q. If the rates from New York and other Northeastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were so reduced as to make them not higher than the Atlanta rates, would not that be a benefit to the merchants at those intermediate points?

A. I do not think it would be of any material benefit to them.

2. Q. The rate on first-class traffic from New York and Philadelphia to Madison and Social Circle is $1.44 per hundred, while to Atlanta for the longer hauls through those points it is only $1.14 per hundred pounds, making a difference of thirty cents in favor of Atlanta. Is not that material difference in the rate?

A. There is a considerable difference there.

3. Q. Does not the prosperity of the merchants and business men of the town promote the prosperity of the town generally?

A. Well, that will hold to a considerable extent.

4. Q. You have stated that the rates from New York and other Eastern cities involved in this case to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are reasonable in and of themselves. Are the lower rates for the longer hauls through those intermediate points to Atlanta also reasonable in and of themselves?

A. Yes, sir; I think they are.

5. Q. Would higher rates be charged to Atlanta but for competition?

A. Yes, sir.

6. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of service of carriage?

A. I should say not. If carried for less than cost, it would be unreasonably low.

7. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or expense of the service of carriage?

A. Well, it is very hard to determine regarding each particular shipment. Probably it is impossible to determine regarding each particular shipment whether it, considered by itself, is remunerative or not. There are so many conditions attending the running of trains and so many cars
225 that an engine can carry, and things of that kind, that I do not see how we can lay down a general rule that would cover the case.

8. Q. Is not the expense of the service of carriage an element to be considered in determining whether a rate or a set of rates is reasonable?

A. In general, yes.

9. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Well, I should say that is a factor.

10. Q. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Necessarily so, other things being equal.

11. Q. Other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. As a general proposition, yes.

12. Q. Other things being equal, is not the wear and tear on locomotive, cars, tracks, road beds, etc., greater, the greater the length of the haul?

A. Yes, sir; the more miles to be traversed, the more the wear and tear on the tracks and things of that kind, as a general proposition.

13. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. All other things being equal, I should say so.

14. Q. Other things being equal, does it not require more locomotives and cars and crews for the running of trains on a long road than on a short one?

A. That would vary with the length of the road quite materially.

15. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater, the greater the length of the road?

A. The character of the country being the same, whether a plain country or mountainous, I should say so.

16. Q. How long have you been engaged in the railroad business east of the Mississippi and south of the Virginias and the Ohio Rivers?

A. Something over twenty years.

17. Q. Has the greater charge for the shorter than the longer haul, over the same line, in the same direction, the shorter haul being
226 included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer distance point?

A. I do not know that it has, sir, of my own observation.

18. Q. Are not the rates involved in this case from New York and other Eastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain made up by combining the through rate to Augusta or Atlanta with the local rates back from Atlanta or on from Augusta, as the case may be, to those intermediate points?

A. I think it is generally made that way.

19. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir.

20. Q. Does the Georgia Railroad attempt to fix rates on interstate commerce or any proportion of such rates?

A. Not except in the case of the Western and Atlantic road, as I told you this morning, where the right is reserved in the lease to the road to the Nashville, Chattanooga and St. Louis Railway to fix its rates through to the terminus in Tennessee. Otherwise they exercise no control over insterstate traffic.

21. Q. Could the State of Georgia give the railroad commission of Georgia any authority to fix rates or any proportion of rates on interstate commerce?

A. Not as a rule.

22. Q. Could they in any case?

A. In the one case I have instanced, the road belongs to the State, and

she has a right in leasing the road to say what rates shall be charged over the road in its entirety.

23. Q. As a matter of law, has the State of Georgia any right to fix rates on interstate commerce? Is not that a matter of Federal jurisdiction?

A. Yes, sir; as a matter of general law, but I do not think it is, in the case of leasing her own road, in violation of the interstate commerce law. It is her own property.

24. Q. Can not all the lines which you have named as competing for the traffic between New York and other Eastern cities and Atlanta be formed also to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain by combinations with the Georgia Railroad as the terminal carrier?

A. They could if the Georgia Railroad consented.

25. Q. Is not traffic transported from New York and other Eastern cities over the line involved in this case, namely, the lines formed by the Clyde Steamship Company to Charleston, then by the South Caro-
227 lina Railway Company to Augusta, and thence by the Georgia Railroad to Greensboro, etc., under through rates?

A. Yes, sir; I should say that all rates that go from one road off on to another are what we might term through rates.

26. Q. Are not the rates by all lines from New York and other Northeastern cities to Atlanta the same?

A. Yes, sir; they are the same by all of the rail and water lines, but the all-rail lines working from New York through Washington and Hagerstown to Atlanta and points basing on Atlanta are certain differentials higher than the rail and water lines.

27. Q. The rates by all the rail and water lines are the same?

A. Yes, sir.

28. Q. And the rates by all the rail lines are the same?

A. Yes, sir. There are two all-rail lines and the rates are the same. There are three or four lines rail and water, and they are the same. But the rail lines are eight cents higher on first class, going on down to one or two cents in the lower classes than the rail and water lines.

NASHVILLE, TENNESSEE, *July 16, 1897.*

R. E. LUTZ, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. R. E. Lutz; residence, Montgomery, Alabama; age, 46; freight traffic manager of the Atlanta and West Point Railroad and the Western Railway of Alabama.

2. Q. How long have you been connected with the railroad transportation business in the United States, and in what capacities?

A. In transportation and traffic about twenty-eight years. I first started out as telegraph operator, then as local agent, then as train dispatcher, then as contracting freight agent, then as chief clerk, clerk in the general freight office, and then traffic manager.

3. Q. In this case the Interstate Commerce Commission ordered the

defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and
228 Stone Mountain, more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta, were, as shown by the report and opinion of the Commission, 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	86	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	85	78	60	49	36	48	40	39	58	68	78

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain so as to make up for any loss of revenue that would otherwise result. Give your reasons for any opinion you may express.

A. A reduction of rates to Georgia Railroad stations named as ordered by the Interstate Commerce Commission would have the effect of reducing to this extent the proportion that would accrue to the Georgia Railroad. The entire reduction as ordered by the Interstate Commerce Commission would come out of the proportion of the rate that now accrues to that road; and while making a serious reduction in the revenue of that road, it would not affect the revenue of the lines delivering the business to the Georgia Railroad. For instance, to Social Circle, on a shipment from New York via Charleston and Augusta, the Georgia Railroad Company now receives for its proportion fifty-one cents per hundred pounds on first class, while under the reduction, which would be twenty cents per hundred pounds, the Georgia Railroad revenue would be decreased practically 40 per cent, with a corresponding reduction on all other traffic. While this would be a heavy decrease in the revenue of the Georgia Railroad, the difference in the through rates would not be sufficiently great to have the effect of increasing the volume of business. The
229 great majority of the shipments from New York and like distributing centers to small towns, such as the stations on the Georgia Railroad, are made necessarily in less than carload quantities and are embraced in the first six classes. That this reduction would increase the volume of the business through increased consumption appears to be entirely improbable. To Social Circle, where the reduction is the greatest, it would only amount to two cents on a suit of clothes, supposing it to weigh only ten pounds, and a small fraction on other like light-weight miscellaneous high-class goods.

4. Q. State whether said rates from New York, Philadelphia, etc., via Charleston and Augusta, to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I believe that the rates from New York and other Eastern cities to the Georgia Railroad stations named to be just and reasonable in themselves, as the rate per ton per mile does not indicate them to be otherwise, and inasmuch as they are not higher than the rates from other points of distribution and to stations on other roads under similar circumstances and conditions.

I attach hereto as Exhibit number 14 memorandum of rates and distances from New York to stations on the Augusta Southern Railroad, the Wrightsville and Tennille Railroad, and the Brunswick and Western Railroad, which shows that the rates to these points are as high or higher, considered on the mileage basis, than the rates complained of to the Georgia Railroad stations.

(This statement referred to is hereto attached, marked Exhibit number 14.)

5. Q. State what lines actively and actually competed and now compete from New York, Philadelphia, etc., in transportation to Atlanta, Georgia, of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines actively competed for business from New York, Philadelphia, etc., in transportation to Atlanta, Georgia, and did in 1892 and do now.

From New York, Philadelphia, etc., via Cincinnati, in connection with the Louisville and Nashville Railroad and the Cincinnati, New Orleans and Texas Pacific Railway.

And through the all-rail gateways of Hagerstown, Alexandria, or Richmond in connection with the Norfolk and Western Railway.

The Southern Railway.

The Atlantic Coast Line and the Seaboard Air Line.

The four last-named railroads also actively compete from
230 Norfolk, Portsmouth, Richmond, and Wilmington for Eastern business up to those points by water.

And the South Carolina and Georgia Railroad.

The Charleston and Western Carolina Railroad.

The Georgia Railroad.

The Southern Railway and the Seaboard Air Line compete for Eastern business through the port of Charleston.

The Central Railroad.

The Plant System.

The Florida Central and Peninsular.

The Charleston and Western Carolina Railroad.

The Georgia Railroad.

The Georgia and Alabama Railway.

The Georgia Southern and Florida Railroad.

The Western Railway of Alabama and the Atlanta and West Point railroads compete for business through the port of Savannah.

The principal steamship lines competing for Eastern business to Atlanta are:

The Clyde lines.

The Old Dominion Steamship Company.

The Merchants and Miners' Steamship Company.

The Ocean Steamship Company and the Mallory Line.

6. Q. State what lines actually and actively competed in 1892 and now

compete from Ohio River points and sections of the country other than New York, Philadelphia, etc., in transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The lines that competed in 1892 and that now compete for business from miscellaneous territory, other than New York, Philadelphia, etc., are:

The Cincinnati, New Orleans and Texas Pacific Railway, in connection with the Western and Atlantic Railroad.

The Southern Railway, or the Chattanooga, Rome and Columbus Railroad.

The Louisville and Nashville Railroad, in connection with the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad.

The Illinois Central and the Ohio Valley Railroad, in connection with the Memphis and Charleston and the Kansas City, Memphis and Birmingham Railroad and their connections.

The Western and Atlantic Railroad.

The Southern Railway and the Central Railroad of Georgia.

The Mobile and Ohio Railroad, in connection with the Mem-
231 phis and Charleston Railroad or the Kansas City, Memphis and Birmingham Railroad and their connections.

The Southern Railroad from Winona, in connection with the Memphis and Charleston or the Kansas City, Memphis and Birmingham Railroad and their connections.

The Southern Railway from Winona, Mississippi, to the point of connection with the Illinois Central Railroad.

From West Point, Mississippi, to the point of connection with the Mobile and Ohio Railroad.

The Western Railway of Alabama and the Atlanta and West Point Railroad from Opelika, Alabama, to the point of connection with the Central of Georgia Railroad.

The St. Louis, Alton and Terre Haute Railroad.

The Alabama and Vicksburg.

The Missouri Pacific.

The New Orleans of Northeastern.

The Alabama Great Southern and the Mobile and Ohio Railroad.

7. Q. State whether or not the Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actually and actively compete for the carriage of freight of the said various classes to Atlanta; and if so, to what cities.

A. The Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actively and actually compete for the carriage of freight of the various kinds to Atlanta from Birmingham, Alabama; Memphis, Tennessee; Kansas City, Missouri, and all points west and south thereof, including Mobile, Alabama; New Orleans, Louisiana; and all Texas, Mexico, and California points. And they also compete for Columbus, Macon, and Savannah, and other towns in Georgia and Florida south thereof, as well as from Northeastern cities by steamship through the port of Savannah.

8. Q. Do said railroads or their connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. The Atlanta and West Point Railroad and the Western Railway of Alabama or their connections have agents at said ports at which we compete for traffic to Atlanta who solicit freight for transportation.

9. Q. Do said railroads or their agents advertise at said cities for transportation of said freight to Atlanta?

A. The Atlanta and West Point Railroad and the Western Railway of Alabama and their connections do advertise at said points of competition for transportation of freight to Atlanta, Georgia.

232 10. Q. State whether the rates of freight on the various classes from New York, Philadelphia, etc., to Atlanta are controlled to any, and if so to what, extent by competition.

A. Atlanta is the interior point doing the largest buisnes as well as being the geographical center of the Southeastern territory, and the extent of competition from every section of the country necessarily influences in a great degree the making of rates from New York, Philadelphia, etc.

11. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain as is sufficient to overcome the rates charged by the lines from New York, Philadelphia, etc., via Charleston and Augusta to those stations.

A. There is no competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain that would interfere with the rates adopted by the direct lines from New York, Philadelphia, etc., via Charleston and Augusta.

12. Q. State whether or not competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers has always been recognized as a factor in determining rates, its importance varying with the degree and nature of the competition. The simple fact that two roads pass through the same point does not necessarily make rates to that point different from what they would be if situated only on one line. This is particularly the case where two roads are really not in actual competition, as the terminal drawing business from different sections. Water competition is an important factor in the adjustment of rates and invariably has the effect of making them low on account of the exceeding cheapness with which water lines can carry freight.

13. Q. Were the Clyde Steamship Company and what was formerly known as the South Carolina Railway Company and the Georgia Railroad and Banking Company and the Louisville and Nashville Railroad and the Central Railroad and Banking Company of Georgia under any common control or management in 1892, or have they been since that time?

A. To the best of my knowledge and belief, the Clyde Steamship Lines and what was formerly known as the South Carolina Railroad Company and the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad, the Central Railroad and Banking Company of Georgia, were not under any common control or management in 1892, nor have they been since that time.

233 14. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commissioners from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from the east to Atlanta were agreed to in August, 1882, on the basis of certain rates from New York to South Atlantic coast points, which were practically the local rates of the steamship lines, to which were added the published rates from the South Atlantic ports to Atlanta. The rates from the South Atlantic ports were made with reference to the rates required by the Georgia railroad commission from Savannah to Atlanta. The railroad commission rate' were not adhered to in every instance, as the figures in connection with the steamship arbitraries did not make what was considered a proper allignment of the through rates, the Georgia commission rates, however, being carefully observed as a maximum; the rates from Boston and Philadelphia were made the same as from New York, while from Baltimore they were made a differential less.

15. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities, and thence by steamships or sailing vessels, thence by the Georgia railroads to Atlanta, control the rates which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. The rates that have been and can be made by the trunk lines from Cincinnati to Baltimore, and steamship or sail vessels in connection with the Georgia roads to Atlanta, unquestionably influence the adjustment of rates and so control them to the extent that the direct lines could not afford to make the rates high' than at present, as to do so would enable the circuitous route to compete for the business at a profit.

16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross-examination by Mr. SHAVER:

1. Q. In answering the questions propounded to you on your direct examination, you read from a manuscript. How long since is it that you prepared those answers?

A. About one month.

234 2. Q. You had been furnished with the interrogatories previously?

A. Yes, sir.

3. Q. Might not reductions in rates which would not appreciably benefit an individual consumer be of great benefit to the merchant dealing with a large number of consumers?

A. Well, I hardly think it would. As I said before, in some cases it might and in others it might not, and then it would not on some classes and on others it would. It might be a benefit on a few of the lower classes and special commodity rates, but certainly not on the first six numbered classes.

4. Q. If the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain from New York and other Eastern cities were so reduced as to make them not higher than the rates through those intermediate points to Atlanta, would not such reductions, in your opinion, be material reductions?

A. Of course it would be some reduction, as a matter of course, but it would not mater'ally affect the business at those several points between Augusta and Atlanta. Neither would it increase the business nor would it have any effect on increasing the business at those points.

5. Q. In the event that the merchants at Atlanta sell goods at Madison, Social Circle, Covington, Conyers, and Stone Mountain, and in the territory adjacent in competition with local merchants at those intermediate points, would not reductions in rates to those points which will make them not higher than the rates to Atlanta be of great benefit to the local merchants at those intermediate points in that competition?

A. In my opinion, it would be of little or no benefit to them. They might possibly on some of the lower classes and commodity rates—they might possibly be able, with the reduction, to compete with the Atlanta merchants, but the advantage the Atlanta merchants might have in handling large quantities of commodities, even at the same rate, in my opinion, would be able to still hold that trade in that section of the country.

7. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. I can not say that it would. In some cases it might, and in many cases it might not.

8. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at that point and the increase of its population?

235 A. Not in all cases.

9. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. There is no question but that is correct—that it does.

10. Q. You stated in your direct examination that in your opinion the rates from New York and other northeastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were just and reasonable in and of themselves. Is that your opinion also as to the lower rates for the longer hauls through those intermediate points to Atlanta.

A. Yes, sir.

11. Q. Do those rates to Atlanta yield the carrier a revenue in excess of the cost of the service of transportation?

A. I should think they would, and I think they do.

12. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I would not consider it a reasonable rate if it did not yield the carrier sufficient revenue over and above the cost of transportation.

13. Q Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost of the expense of the service of carriage?

A. That would be the only means we would have of knowing or trying to approximate as to about what the cost—that is, trying to find out the

cost as near as you can of carrying a ton of freight a mile or anything in excess of that—quite a number of things you have to take into consideration in saying whether that would be a profitable rate or not. For instance, you might at certain seasons of the year haul certain freight on certain trains that had to move anyhow whether they had one car or whether they had twenty. In that case you could probably move a car of freight or a ton of freight at much less expense than you could had you to provide special service, or if it were at other times of the year. There are times when we accept certain freights that we would not accept at other times. I will take the local freight, for instance, that will run between Atlanta and West Point. That train has got to run; we have got to pay the engineer, and we have got to pay the crew; and by adding on probably one or two more cars, or something of that kind, it probably would not add to the cost of the train but very little more. Now
236 if we had to go to work to perform a certain service for a certain class of low freight we often could not afford to haul it; we turn down lots of it.

14. Q. The transportation of the hindmost car would cost the road as much for transporting it the same distance as it cost for the foremost car?

A. That would not always be the case, for the very reason that the foremost car would not be switching back and forth as much, being attached to the engine, and the wear and tear of that car, and the cost of repairs to that car, and the accidents to that car would not be as great as the hindmost car that was constantly being switched from the point of shipment to the final destination. Going into the switch so often might cause a drawframe to be pulled out, or a brake being broken, or something of that kind, and even if no accident happened to the car there is obliged to be more wear and tear on that car.

15. Q. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

16. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

17. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

18. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, and roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

19. Q. Other things being equal, is not the cost of keeping the road in repair or good condition greater the greater the length of the road?

A. Yes, sir.

20. Q. Other things being equal, does it not require more locomotives and cars and crews for running a train on a long road than on a short one?

A. Yes, sir.

21 Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital, greater the greater the length of the road?

A. Yes, sir.

22. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir.

237 23. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Nearly 25 years.

24. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer-distance point?

A. No, sir.

25. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads and lines, in your opinion, a reasonable rate?

A. Yes, sir.

26. Q. In your direct examination you named a number of lines that could be formed to Atlanta and which you stated compete for business to Atlanta. Can not all these lines be also formed to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain by combination with the Georgia Railroad as the terminal carrier?

A. Yes, sir; I think so.

27. Q. Is not traffic transported from New York and other Northeastern cities over the line involved in this case to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain under through rates?

A. Yes, sir; I believe they are.

28. Q. Is not such traffic transported to those points under through bills of lading issued by the initial carrier at New York or other Northeastern cities?

A. Yes, sir.

29. Q. Are not those rates published rates?

A. I can not answer for certain, but I think they are; and it is customary to publish a through line of rates from Eastern cities, more so than it is from Western cities.

30. Q. You spoke of agents of the road soliciting business at New York and other Northeastern cities to Atlanta?

A. Yes, sir.

31. Q. Do they not also solicit business to intermediate points—Greensboro, etc.?

A. Not as actively as they do to Atlanta. Competition is not as great at those points. They might, up to certain junction points.

32. Q. They solicit business, do they not, to any points on their roads?

A. Oh, yes; all points.

238 33. Q. Are not the rates by all the lines from New York and other Northeastern cities to Atlanta the same?

A. The same by the all-rail lines and the same by the rail and water lines. They are not the same by rail and water.

34. Q. Would higher rates be charged to Atlanta but for competition?

A. I think so.

35. Q. Are not the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain combinations of through and local rates?

A. That is my understanding, that they are made on that basis.

36. Q. Are they not combinations of the through rates to Augusta or Atlanta, as the case may be, plus the local rates from those points on to the intermediate local stations?

A. I am not exactly positive on that point, but I think they are made either on the basis of the rates to Augusta or Atlanta plus the locals back. I do not think there are any intermediate junction points for them to base on. If there are, I do not know, but it is possible there may be. I do not think there is.

37. Q. Does the Georgia railroad commission undertake to prescribe or regulate through rates on interstate commerce or any proportion of such rates?

A. No, sir.

38. Q. Are not the rates from Atlanta to Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro local rates?

A. I believe they are, of the Georgia Railroad.

39. Q. Are not the rates from Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain also local rates?

A. I think they are.

40. Q. If the rule that a greater charge for the shorter than the longer haul over the same lines, in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from a given point to a given point, would it be necessary for any one of those roads or lines to depart from this rule, in order to retain its share of the traffic and prevent diversion of its traffic to other roads or lines?

A. No, sir.

Redirect examination by Mr. BAXTER:

1. Q. Is it practicable for the lines from New York via Charleston, Augusta, and Atlanta to charge as high rates from New York and
239 other Eastern cities to Atlanta as are charged from New York and other Eastern cities to local stations on the Georgia Railroad between Augusta and Atlanta?

A. I do not think it is practicable or possible.

NASHVILLE, TENNESSEE, *July 17, 1897.*

W. A. WINBURN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupations.

A. W. A. Winburn; age, 37; residence, Savannah, Ga.; occupation, general freight agent of the Central of Georgia Railway Company.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. Since 1881; as clerk in the local freight office, clerk in the assistant general freight office, division freight and passenger agent, and general freight agent, respectively.

3. Q. In this case the Interstate Commerce Commission ordered the

defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Convers, and Stone Mountain more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Convers, Stone Mountain, and Atlanta were, as shown by the report and opinion of the Commission in 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	64	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Convers	138	119	105	86	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	56	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

240 State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Convers, and Stone Mountain, so as to make up for any loss of revenue that would otherwise result. Give your reasons for any opinion you may express.

A. I do not think the reduction in the rates from Eastern cities to Greensboro and other local stations on the Georgia Railroad, making them the same as the rates to Atlanta, would result in any material increase in shipments to those points, because there is not a sufficient trade at and contiguous to these stations in the character of the traffic shipped from the East to justify the stablishment of wholesale or large retail stores such as now deal in these goods at Atlanta.

4. Q. State whether said rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Convers, and Stone Mountain are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I consider them reasonable. First, because they are not higher than to points on other roads in the same sections, similarly situated. Second, because they are not higher than the rates established by competition to Augusta, Athens, Atlanta, or Macon, or Milledgeville, plus the local rates prescribed by the Georgia Railroad Commission from those points?

5. Q. State what lines actually and actively competed in 1892, and now compete from New York, Philadelphia, etc., in transportation to Atlanta, Georgia, of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The Southern Railway.
The Georgia Railroad.
The Seaboard Air Line.
The Central of Georgia Railway.
The Clyde Steamship Company.
The Old Dominion Steamship Company.
The Ocean Steamship Company.
The Merchants and Miners' Transportation Company.
The Mallory Steamship Line.

The Atlantic Coast Line.
The Norfolk and Western Railroad.
The South Carolina and Georgia Railroad.
The Pennsylvania Railroad.
The Charleston and Western Carolina Railroad.

6. Q. State what lines actually and actively competed in 1892, and now compete from Ohio River points and sections of the country
241 other than New York, Philadelphia, etc., in transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. From Ohio and Mississippi River points.
The Louisville and Nashville Railroad.
The Nashville, Chattanooga and St. Louis Railroad.
The Western and Atlantic Railroad.
The Southern Railway.
The Cincinnati, New Orleans and Texas Pacific Railroad.
The Illinois Central Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Memphis and Charleston Railroad.
The Norfolk and Western Railroad.
The New Orleans and Northeastern Railroad.
The Atlanta and West Point Railroad.
The Western Railway of Alabama.
The Mobile and Birmingham Railroad.
The Alabama Great Southern Railroad.
The Mobile and Ohio Railroad.

7. Q. State whether or not your railroad, the Central of Georgia Railway, and its connections, actually and actively compete for the carriage of freight of the said various classes to Atlanta. If so, from what cities?

A. It competes from all Eastern cities, but not from Ohio or Mississippi River crossings.

8. Q. Does your railroad or its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. It maintains agencies at Boston, New York, Philadelphia, and Baltimore, and actively solicits business from the Atlantic seaboard and the interior Eastern territory to Atlanta. It also maintains agencies at Cincinnati, St. Louis, Kansas City, Memphis, New Orleans, and Nashville, but they do not actively solicit business to Atlanta.

9. Q. Does your railroad or its connections advertise in New York, Philadelphia, Baltimore, and other Eastern cities for transportation of said freight to Atlanta?

A. Yes, sir.

10. Q. State whether the rate on freight of the various classes from New York, Philadelphia, etc., to Atlanta are controlled by any, and if so to what, extent by competition.

A. The rates from Boston, New York, Philadelphia, and Baltimore to Atlanta are controlled largely by competition between the various Eastern carriers; also by competition with the carriers serving the Western markets.

11. Q. State whether competition between carriers, whether by
242 rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Continually depresses the rates of transportation.

12. Q. Were the Clyde Steamship Company and what was formerly known as the South Carolina Railway Company, and the Georgia Railway and Banking Company, and the Louisville and Nashville Railroad, and the Central Railroad and Banking Company of Georgia, under common control or management in 1892, or have they been since that time?

A. Not so far as I know.

13. Q. Explain the basis of making rates from New York, Philadelphia, etc., to Atlanta. Are the rates fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. That is a difficult question to answer. The rates now in effect are substantially those in effect when I first became familiar with the Atlanta traffic. But in a general way they are the outgrowth of compromise agreement between the Eastern carriers and between the carriers from the East and the carriers from the West.

They are in many cases affected by the rates of the Georgia railroad commission from the ports of Savannah and Brunswick, and also to some extent by the rates so prescribed from Augusta.

14. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think of anything else.

Cross-examination by Mr. SHAVER:

1. Q. I notice that in answering the direct interrogatories propounded to you, you read from a manuscript you have before you. How long ago did you prepare your answers?

A. On June 17th.

2. Q. Had you been furnished with the interrogatories prior to that time?

A. Yes, sir; on June 9th.

3. Q. Do not Atlanta merchants trade or sell goods at Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro and in adjacent territory in competition with local merchants at those points?

A. I think they sell only in competition with the more pros-
243 perous farmers, but to the merchants also. I should say that the bulk of their trade with the people in that section was with the merchants.

4. Q. Would not a reduction of the rate to Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro from New York and other Northeastern cities so as to make the rates to those points not higher than the rates for the longer haul through them to Atlanta benefit the local merchants at those points in their competition with Atlanta merchants?

A. Yes, sir. A reduction in the rates to Stone Mountain, Greensboro, etc., from the East would be a benefit to those merchants located at those points who have sufficient credit to be able to purchase at Eastern cities in competition with the merchants of Atlanta. It would be no benefit, but a disadvantage, to those who, by reason of their limited means or indifferent credit, had to continue to make their purchases at Atlanta.

5. Q. Where two localities so situated with reference to each other that they compete for business in the same territory does not a system of rates that is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. All of the conditions being the same, I should say they would, unquestionably.

6. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Not necessarily, I think.

7. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. It would be on raw material into a point where it is proposed to manufacture goods, and also true of manufactured products from such points. I do not think that a reduction in dry goods to a point such as is described above, use that as an illustration—taking either one of these points as an illustration—I do not think that a reduction in the rates on dry goods or on soap or on sugar would increase the consumption of those articles at those points in any degree at all. I do not believe it would bring about immigration or removal of parties from other sections to these points.

8. Q. Do not transportation rates enter into and affect the price of goods?

A. Yes, sir; generally.

244 9. Q. Do not lower rates therefore tend to bring about lower prices of goods?

A. On heavy commodities where prices are close a small difference in freight rates would affect the selling price, but in dry goods or boots or shoes, or other traffic of that class, I do not think that a material difference in rates of freight would cause a variation in the selling price. I do not believe if a man were paying $1 a hundred pounds on boots and shoes to a given point and sold his shoes at $1.25 a pair that if his rates were reduced to 85 cents he would sell those shoes for less than $1.25.

10. Q. Might not the reduction in rates, which would not appreciably benefit an individual consumer, be of great benefit to the merchants who sells goods to a large number of consumers?

A. The seller would undoubtedly put an additional profit in his pocket.

11. Q. Does not the prosperity of a locality generally depend to a very great extent upon the prosperity of its merchants and business men?

A. I should say so.

12. Q. Is not the tendency of lower prices of goods to bring those goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. I do not think that is always the rule by any means.

13. Q. Is it true as a general rule?

A. I think not; I think it is exceptional.

14. Q. Do not people lay in supplies in proportion to their means?

A. That depends a good deal on the individual.

15. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads or lines in your opinion a reasonable rate?

A. Yes, sir.

16. Q. Are the rates from New York and other Northeastern cities involved in this case to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain in your opinion reasonable in and of themselves?

A. Yes, sir; I consider them reasonable in and of themselves.

17. Q. Do you also consider the rates from New York for the haul through those intermediate points to Atlanta just and reasonable in and of themselves?

A. Yes, sir.

18. Q. Is a rate in your opinion a reasonable rate which does not give the carrier a proper remuneration over and above the cost of the service of carriage?

245 A. That depends on what we call a proper remuneration above the cost of carriage. It seems to me there are a great many cases where a rate would be reasonable if it was above the cost of carriage to any extent, dependent largely on the movement of traffic in different directions.

19. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or the expense of the service of carriage?

A. The cost of the carriage is an uncertain quantity, varying almost with every class of freight, and varying on the same classes of freight at different times and moving in different directions.

20. Q. I understand that, but that is not an answer to my question. My question is, can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage? In other words, can it be ascertained whether a rate pays the carrier a profit without first considering the expense or the cost of the carriage?

A. As it is impossible to ascertain the cost of carriage in a great majority of cases, it is difficult to tell whether any particular rate or any particular traffic will pay a profit. We have as a guide the general tariffs. We know what the outturn is from those tariffs, and we vary from them as necessity requires, and after all when you come down to rate making on heavy commodities, which require low rates of transportation, it is largely a rule-of-thumb process. By observation and experience we ought to know and try to know whether we will make or lose money on any shipment. If we think we are not going to make money, we will not take it. If we think it pays, we will take it. Whether we always make a profit we do not know.

21. Q. In your opinion, then, is *that* it *is* impossible for the carrier to ascertain whether a given rate is reasonably remunerative?

A. My answer had reference particularly to exceptionally low rates—that is, rates lower than the general standard of rates. In cases of this kind I think it is frequently impossible to tell whether we will make or lose money by the carriage.

22. Q. Does not the cost or the expense of the service of transportation depend largely or the length of the haul?

A. All other things being equal, I would say that the cost of the haul per mile would decrease as the length of the haul increased. Not in any given rate, but to some extent, at least.

23. Q. Would not the aggregate cost increase as the length of the haul increased, other things being equal?

A. All other things being equal; yes, sir.

246 24. Q. All other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

25. Q. All other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. I do not know much about the consumption of fuel. I would not like to give an expert opinion as to that, as I do not handle any fuel.

26. Q. All other things being equal, is not the wear and tear on locomotives, cars, track, roadbed, &c., greater the greater the length of the haul?

A. I think so.

27. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. Of that I know nothing about at all.

28. Q. Other things being equal, does it not require more locomotives and crews for the running of trains on a long road than on a short one?

A. I think that depends a great deal upon how much longer the long road is than the short road.

29. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

30. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio rivers?

A. Sixteen years.

31. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer distance points?

A. I can think of no such case at present.

32. Q. In your direct examination you named a number of lines from New York to Atlanta, which you stated competed for business between those points. Can not all those lines be also formed to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain by combination with the Georgia Railroad as the terminal carrier with the consent of all the road members of those lines?

A. I think so.

247 33. Q. Are there not other roads to Social Circle and Madison than the Georgia Railroad?

A. The Central of Georgia Railway crosses the Georgia Railroad at Madison. The Gainesville, Jefferson and Southern Railroad touches the Georgia Railroad at Social Circle, but the Georgia Railroad, I believe, have, until the last few months, operated this road.

34. Q. Is not traffic transported from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain under through bills of lading issued by the initial carrier at New York or other Eastern cities?

A. Yes, sir.

35. Q. Do not said bills of lading name aggregate through rates to those intermediate points?

A. Yes, sir.

36. Q. You stated, I think, that you had agents for the solicitation of traffic to Atlanta. Do not those agents also solicit traffic to all points on your road besides Atlanta to which through rates are named?

A. Yes, sir.

37. Q. Are not the rates to Madison, Greensboro, Covington, Social Circle, Conyers, and Stone Mountain from New York and other Northeastern cities made up of the through rates to either Augusta or Atlanta plus the local rates back to or on to those points, as the case may be?

A. That is my understanding.

38. Q. Are not the rates from Atlanta, Stone Mountain, Covington, Conyers, Social Circle, Madison, and Greensboro local rates?

A. I believe so.

39. Q. Are not the rates from Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain local rates?

A. I believe so.

40. Q. Is not the expense to the carrier per ton per mile on local hauls greater than on long through hauls?

A. I do not know.

41. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York or Northeastern cities to Atlanta, and the rates by all those lines to Atlanta were the same, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of the traffic and prevent diversion of its traffic to other roads or lines?

248 A. Not if it was practicable to make the rates to Atlanta as high as the rate to any intermediate point on any of the routes competing for Atlanta business.

42. Q. If the rates by all the lines between the points named were as high as the intermediate rates by any line, and the rates by all the lines were the same, would that result in any diversion of traffic from one line to another?

A. Such an adjustment of rates would contemplate the relative advance of the rates via the Mallory line, therefore that line would lose a share of the traffic which it now enjoys to Atlanta. I think the other lines, it seems to me, would be on the same comparative footing if it did not divert any of the traffic from the East to Atlanta. That is, if by reason of the advance in the rates to Atlanta traffic which Atlanta now enjoys was not diverted to Macon, or Augusta, or other points with which we now come in competition.

Redirect examination by Mr. BAXTER:

1. Q. Is it practicable to maintain rates from New York and other Northeastern cities via Augusta to Atlanta as high as the rates which are now charged from New York and other Northeastern cities via Augusta

to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. I do not believe it is. It could not be done without the consent of all the carriers and I do not believe that could be obtained.

Recross-examination by Mr. SHAVER:

1. Q. It would be practicable with their consent, would it not?

A. I think so.

Re-redirect examination by Mr. BAXTER:

1. Q. Would not the rates by tramp steamers and sailing vessels to Savannah, with the rate by river from Savannah to Augusta, plus the rates fixed by the Georgia railroad commission from Augusta to Atlanta, aggregate less than the rate now charged from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. That would depend, it seems to me, largely on the amount of that traffic which would bear slow transportation. The traffic which moved principally from the East is a high class of traffic and might or might not furnish sufficient volume to warrant the employment of sailing vessels.

249 2. Q. What prevents all of the lines operating from New York and other Eastern cities to Atlanta getting together, and if not by agreement, at least by concert, charge as high rates to Atlanta as are charged from New York and other Northeastern cities to local stations on the Georgia Railroad between Augusta and Atlanta?

A. The rates that are now charged are substantially those which were charged ten or fifteen years ago, before the creation of the Georgia railroad commission, and were made, I presume, by the lines then competing for the business and considered by them just and reasonable. There has always been and probably will continue to be a division of opinion as to whether or not a materially higher rate to Atlanta would be in and of itself unfair.

NASHVILLE, TENNESSEE, *July 19, 1897.*

GEORGE R. KNOX, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George R. Knox; 52; general freight agent Nashville, Chattanooga and St. Louis Railway; Nashville, Tenn.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. I was in the local freight office and in the accounting department for some time before entering the general freight agent's office of the Nashville, Chattanooga and St. Louis Railway. I have been in the general freight office since March, 1867, and as subordinate clerk, chief clerk, assistant general freight agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone

Mountain more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain, and Atlanta were as shown by the report and opinion of the Commission, in 1892, as follows:

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	Classes.											
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Covington	142	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	40	39	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. In my opinion, if the rates to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, Ga., were reduced to the same as Atlanta, it would simply result in a loss of revenue of the freight handled to the extent of such reductions, as the volume of business would not be materially increased on account of such reductions for the reason that these points are what might be termed consumptive points and do very little, if any, jobbing or distributing business.

4. Q. State whether said rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. Yes, sir; I consider the rates from New York, Philadelphia, etc., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain just and reasonable for the reason that they do not allow the carriers excessive revenue for the service performed. Furthermore, they compare favorably with other rates for similar distances and services. These points do receive the benefit of competition up to Atlanta.

5. Q. State what lines actually and actively competed in 1892
251 and now compete from New York, Philadelphia, etc., in transportation to Atlanta, Ga., of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. These lines are as follows:

Route No. 1: The Ocean Steamship Company to Savannah, 250 miles; the Central of Georgia Railway to Atlanta, 294 miles.

Route No. 2: The Clyde Steamship Line to Charleston, 250 miles; the South Carolina & Georgia Railroad to Augusta, 138 miles; the Georgia Railroad to Atlanta, 171 miles.

Route No. 3: The Ocean Steamship Company to Savannah, 250 miles; the Plant Line to Jesup, 57 miles; the Southern Railway to Atlanta, 287 [or 237] miles.

Route No. 4: The Old Dominion Steamship Company to Norfolk, 160

miles; the Norfolk & Western Railroad to Bristol, 408 miles; the Southern Railway to Atlanta.

Route No. 5: The Old Dominion Steamship Company to Norfolk, 160 miles; the Norfolk & Western Railroad Company to Bristol, 400 miles; the Southern Railway to Chattanooga, 242 miles; the Western & Atlantic Railroad to Atlanta, 138 miles.

Route No. 6: The Old Dominion Steamship Company to Portsmouth, 160 miles; the Seaboard Air Line to Atlanta, 595 miles.

Route No. 7: The Old Dominion Steamship Company to Norfolk, 160 miles; the Southern Railway to Chattanooga, 626 miles; the Western & Atlantic Railroad to Atlanta, 138 miles.

Route No. 8: The Old Dominion Steamship Company to Norfolk, 160 miles; the Southern Railway to Atlanta, 595 miles.

Route No. 9: The Old Dominion Steamship Company to Pin-
252 ners Point, 160 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railroad to Augusta, 57 miles; the Georgia Railroad to Atlanta, 171 miles.

Route No. 10: The Lehigh Valley Railroad to Allentown, 93 miles; the Philadelphia & Reading Railroad to Shippersburg, 131 miles; the Western Maryland Railroad to Hagerstown, 46 miles; the Norfolk & Western Railroad to Bristol, 390 miles; the Southern Railway to Chattanooga, 242 miles; the Western & Atlantic Railroad to Atlanta, 138 miles.

Route No. 11: The Central Railroad of New Jersey to Allentown, 90 miles; the Philadelphia & Reading Railroad to Shippersburg, 131 miles; the Western Maryland Railroad to Hagerstown, 46 miles; the Norfolk & Western Railroad to Bristol, 390 miles; the Southern Railway to Chattanooga, 242 miles; the Western & Atlantic Railroad to Atlanta, 138 miles.

Route No. 12: The Pennsylvania Railroad to Harrisburg, 195 miles; the Cumberland Valley Railroad to Hagerstown, 74 miles; the Norfolk & Western Railroad to Bristol, 390 miles; the Southern Railway to Chattanooga, 242 miles; the Western & Atlantic Railroad to Atlanta, 151 miles.

Route No. 13: The Pennsylvania Railroad to Alexandria, 237 miles; the Southern Railway to Chattanooga, 710 miles; the Western & Atlantic Railroad to Atlanta, 138 miles.

Route No. 14: The Pennsylvania Railroad to Delmar, 215 miles; the New York, Philadelphia & Norfolk Railroad to Pinners Point, 131 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railroad to Augusta, 57 miles; the Georgia Railroad to Atlanta, 171 miles.

Route No. 15: The Central Railroad of New Jersey to Bound Brook, 31 miles; the Philadelphia & Reading Railroad to Philadelphia, 60 miles; the Baltimore & Ohio Railroad to Alexandria, 144 miles; the
253 Southern Railway to Chattanooga, 710 miles; the Western & Atlantic Railroad to Atlanta, 151 miles.

Route No. 16: The Pennsylvania Railroad to Delmar, 215 miles; the New York, Philadelphia & Norfolk Railroad to Portsmouth, 131 miles; the Seaboard Air Line to Atlanta, 595 miles.

Route No. 17: The Mallory Steamship Line to Brunswick; the Southern Railway to Atlanta.

Route No. 18: The Mallory Steamship Line to Brunswick; the Plant System to Albany; the Central of Georgia Railway to Atlanta, 131.

6. Q. State what lines actually and actively competed in 1892 and now compete from Ohio River points and sections of the country other than New York, Philadelphia, etc., in transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F?

A. All lines west of Pittsburg leading southwardly competing for the transportation of freight to Atlanta from points other than New York, Philadelphia, etc.

Those competing south of the Ohio River are as follows:

From Cincinnati, O.

Route No. 1: The Cincinnati Southern Railway to Chattanooga; the Western & Atlanta Railroad or the Southern Railway to Atlanta.

Route No. 2: The Louisville & Nashville Railroad to Nashville; the Nashville, Chattanooga & St. Louis Railway to Chattanooga; the Western & Atlantic Railroad or the Southern Railway to Atlanta.

Route No. 3: The Louisville and Nashville Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 4: The Louisville & Nashville Railroad to Montgomery; the Western Railway of Alabama and the Atlanta and West Point Railroad to Atlanta.

254 Route No. 5: The Louisville & Nashville Railroad to Montgomery; the Central of Georgia Railway to Atlanta.

From Louisville, Kentucky.

Route No. 1: The Louisville Southern Railway to Burgin; the Cincinnati Southern Railway to Chattanooga; the Western & Atlantic Railroad or Southern Railway to Atlanta.

Route No. 2: The Louisville & Nashville Railroad to Nashville; the Nashville, Chattanooga & St. Louis Railway to Chattanooga; the Western & Atlantic Railroad or Southern Railway to Atlanta.

Route No. 3: The Louisville and Nashville Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 4: The Louisville & Nashville Railroad to Montgomery; the Central of Georgia Railway to Atlanta.

Route No. 5: The Louisville & Nashville Railroad to Montgomery; the Western Railway of Alabama and the Atlanta and West Point Railroad to Atlanta.

From Evansville, Indiana.

Route No. 1: The Louisville & Nashville to Nashville; the Nashville Chattanooga & St. Louis Railway to Chattanooga; the Western and Atlantic Railroad or Southern Railway to Atlanta.

Route No. 2: The Louisville & Nashville Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 3: The Louisville & Nashville Railroad to Montgomery; the Central of Georgia Railway to Atlanta.

Route No. 4: The Louisville & Nashville Railroad to Mont-
255 gomery; the Western Railway of Alabama and the Atlanta & West Point Railroad to Atlanta.

From Cairo, Illinois.

Route No. 1: The Illinois Central Railroad to Martin; the Nashville, Chattanooga & St. Louis Railway to Chattanooga; the Western & Atlantic Railroad or Southern Railway to Atlanta.

Route No. 2: The Illinois Central Railroad to Martin; the Nashville, Chattanooga & St. Louis Railway to Nashville; the Louisville & Nashville Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 3: The Illinois Central Railroad to Martin; the Nashville, Chattanooga & St. Louis Railway to Nashville; the Louisville & Nashville Railroad to Montgomery; the Western Railway of Alabama and the Atlanta & West Point Railroad to Atlanta.

Route No. 4: The Illinois Central Railroad to Winona; the Georgia Pacific Railway to Atlanta.

Route No. 5: The Illinois Central Railroad to Holly Springs; the Kansas City, Memphis and Birmingham Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 6: The Illinois Central Railroad to Martin; the Nashville, Chattanooga & St. Louis Railway to Nashville; the Louisville & Nashville Railroad to Montgomery; the Central of Georgia Railway to Atlanta.

Route No. 7: The Mobile & Ohio Railroad to Tupelo; the Kansas City, Memphis & Birmingham Railroad to Birmingham; the Georgia Pacific Railway to Atlanta.

Route No. 8: The Mobile and Ohio Railroad to Tupelo; the Kansas City, Memphis & Birmingham Railroad to Birmingham; the Central of Georgia Railway to Atlanta.

256 Route No. 9: The Mobile and Ohio Railroad to West Point; the Georgia Pacific Railway to Atlanta.

Route No. 10: The Mobile & Ohio Railroad to West Point; the Georgia Pacific Railway to Birmingham; the Central of Georgia Railway to Atlanta.

Route No. 11: The Mobile & Ohio Railroad to Lauderdale; the Southern Railway to Selma; the Western Railway of Alabama and the Atlanta and West Point Railroad to Atlanta.

Route No. 13: The Mobile & Ohio Railroad to Lauderdale; the Southern Railway to Selma; the Western Railway of Alabama and the Atlanta & West Point Railroad to Montgomery; the Central of Georgia Railway to Atlanta.

7. Q. State whether or not the Nashville, Chattanooga and St. Louis Railway and its connections actually and actively compete for the transportation of traffic of the various classes to Atlanta, and if so, from what cities.

A. Yes, sir; the Nashville, Chattanooga & St. Louis Railway and its connections compete for the transportation of all classes of freight to Atlanta. It competes from Ohio River points, Memphis, and points north of the Ohio and west of the Mississippi rivers.

8. Q. State whether said railways and their connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. Yes, sir; the Nashville, Chattanooga and St. Louis Railway has agents at Memphis, Cairo, Paducah, Chicago, and Kansas City who actively solicit freight for transportation to Atlanta, and our friendly connections also have agents who solicit for the same traffic.

9. Q. State if said railway or its connections advertise at said cities for the transportation of said freight to Atlanta?

A. Yes, sir; the Nashville, Chattanooga and St. Louis Railway publishes tariffs showing rates from Memphis, Cairo, and Paducah, and our connections also publish through rates from other points.

10. Q. State whether the rates on the various classes from
257 New York, Philadelphia, etc., to Atlanta are controlled to any, and if so, to what, extent by competition.

A. Yes, sir; the rates from New York, Philadelphia, etc., to Atlanta are controlled by competition. There is a relative adjustment between Eastern cities on the one hand and Cincinnati and Ohio River points on the other, to Atlanta, Macon, Opelika, etc.

In addition to that, there is very strong competition among the various Eastern lines on traffic to Atlanta. Lines working south through Savannah, through Norfolk, and Portsmouth, as well as the all-rail lines from the East working through Hagerstown and Alexandria compete very vigorously for the traffic to Atlanta.

11. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted?

A. Yes, sir; competition between carriers, whether by rail or by water, affects the circumstances under which the transportation is conducted.

12. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers or Stone Mountain as is sufficient to affect the rates charged by the lines from New York, Philadelphia, etc., via Charleston and Augusta to those stations.

A. I do not consider that the same competition exists at Greensboro, Madison, Social Circle, Covington, Conyers or Stone Mountain as at Atlanta, but they do, however, have the benefit of the competition that exists up to Atlanta and also Augusta.

13. Q. State whether the number of tons carried one mile or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, can be used, either singly or together, as a standard in railroad rate making, and give your reasons for any answer you may make.

A. No, sir; I do not consider that the freight receipts per ton per mile, or the estimated cost per ton per mile, or the number of tons carried one mile, or the estimated cost of carrying one ton one mile, can be used as a standard or basis for making of rates, for the following reasons:

(a) The local freight of a road is handled under entirely different circumstances and conditions from through or competitive freight.

(b) On competitive freight, as a rule, the value of transportation is fixed by the surroundings.

258 (c) There are certain fixed charges and expenses which have to be made whether the business is light or heavy.

(d) The freight receipts per ton per mile may show heavy on account of the class or character of the freight hauled; then, again, from the same reason, it may show light on account of the low class of freight.

Again, the volume of business, as well as the class of freight and how it averages up, necessarily changes the freight rates per ton per mile as well as the cost of transportation.

14. Q. Explain the basis of making rates from New York, Philadelphia, etc., to Atlanta. Are the rates which are fixed by the Georgia Railroad Commission from the Georgia seacoast taken into consideration?

A. Rates from the East are made by taking Augusta as the basis and the rates from Baltimore established in line with combinations through the ports. Then, Atlanta rates are made the following differentials above Augusta:

1	2	3	4	5	6	A	B	C	D	E	H	F
18	71	16	15	13	12	8	6	8	8	15	14	17

Of course, in establishing these rates the Georgia commission rates were taken into consideration also.

These differentials as between the different Southern cities on rates both from the East and from the West have been the outgrowth of a great many years conflict and contention between those various cities and the railroads serving those cities. At different times in years gone by commercial delegates from the various cities would meet the railroad people in joint convention and the matter would be fully discussed and then by a sort of general agreement between the commercial delegates from the various cities and the railroads serving those various cities, certain differentials were established and with some slight modification the differentials obtained in that manner are still in effect.

15. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject to this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I think these questions have covered the ground quite fully.

Cross-examination by Mr. SHAVER:

259 1. Q. In the event that the Atlanta merchants sell goods at Stone Mountain, Conyers, Covington, Social Circle, Madison and Greensboro, and in the territory adjacent to those points, in competition with the local merchants of those points, would not a reduction in the rates from New York and other Northeastern cities to those points, so as to make their rates not higher than the Atlanta rates, greatly benefit the local merchants at those points in that competition?

A. If in adjusting rates, if that became necessary, Atlanta was made the same as the rates now in effect to those local points, then, of course, there would be no reduction to those points, but an advance to Atlanta, and the only benefit that I can see to the dealers at Stone Mountain, Conyers, Covington, etc., even in the event that Atlanta competes with them, which I do not understand to be the case—the only benefit, or the principal benefit, which would ensue to them would be the exclusion of Atlanta from that trade, because Atlanta, having first to pay the first rate to bring the goods in, and then having to pay the second rate out, which they would not pay at all selling in their own town, or a much less rate if sold at a near-by point, which would give them such advantage over the merchants of Atlanta that the Atlanta dealers would find they were driven out of competition.

2. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point toward improving and increasing the business at that point?

A. Frequently it does not have that effect. If the rates on flour, corn, hay, and hog products from the West to the Southeast were reduced one-half, I do not think it would have any material on the volume of traffic, nor do I think it would have any if the rates on cotton from the Southeast, the seaboard, or Eastern cities were cut in half, that it would materially affect the volume of that traffic.

3. Q. Which is more beneficial to the business of a locality, high rates or low rates?

A. It depends altogether on the conditions surrounding it. Low rates on agricultural products from the West have proven very injurious to Tennessee farmers. They would be benefited if those rates were made higher.

In my opinion the opening of many new Western lines and low rates made from the very fertile, low-priced fields of the West and Northwest have materially and permanently lowered the values of the farm lands throughout Tennessee.

4. Q. As a general rule, in the absence of exceptional conditions, which are more beneficial to a locality, high rates or low rates?

260 A. Sometimes one and sometimes the other. The manufacturer likes to have low rates to get out with his products. He likes to have high rates into his territory from other territory—into his section on the like character of goods.

5. Q. Do not rates of transportation enter into and affect the prices of goods sold by merchants?

A. On some classes the rate of freight does no doubt have a controlling influence on the price; on other classes it has very little to do with the price. Take, for instance, dry goods from New York to any of the Southeastern markets, or boots and shoes; if the rate of freight was cut half in two the probability is that the consumer would pay the same price for dry goods, would pay the same price for boots and shoes, as they do now?

6. Q. Would not the merchants be benefited?

A. The merchants' profits would be somewhat increased.

7. Q. Does not the general prosperity of a locality depend largely on the prosperity of its merchants and business men?

A. It does; and manufacturers, I would add, where it has them.

8. Q. Is not the natural tendency of a reduction in rates to a given point toward the investment of capital at such point and the increase of its population?

A. Yes, sir; that is, the reduction in rates to a point will encourage the investment of capital at that point.

9. Q. Is not that the natural tendency?

A. No, sir; frequently the reverse.

10. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point toward the encouragement of the investment of capital at such point and the increase of its population?

A. No general answer can be given. In each instance the other conditions and surroundings of the particular town in question would, n:

doubt, enter largely into the result. Low rates on raw material for manufacturing purposes to a given point are beneficial. But, as heretofore explained, low rates on manufactured goods to the same point, in competition with the local manufacturer, are injurious.

11. Q. Injurious to the local manufacturer?

A. Yes, sir; injurious to the local manufacturers, and, as explained above, on agricultural products low rates from the West to Tennessee points have proved injurious to the Tennessee farmers while beneficial to the Tennessee consumers. So that low rates to any point, while benefiting some classes of population, must injure others, and whether
161 or not the entire community is benefited by it depends on the preponderance or greater number of those who are benefited or those who are injured.

12. Q. Are not the consumers in all instances benefited by low rates on articles which they consume?

A. They might be benefited in securing some of their supplies at slightly lower prices, although, as stated in the case of dry goods, and boots and shoes from the East, possibly the consumer might get no benefit, but the jobber or merchant might receive some; but if these consumers should be employes of the manufacturing establishments which were injured by these low rates to other points, a reduction in their wages might more than offset the less price of the articles which they consume.

13. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir.

14. Q. In your direct examination you stated that the rates from New York and other Northeastern cities via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain were just and reasonable. Among other reasons for that opinion, you stated that they did not allow carriers excessive remuneration for the service performed. It is also your opinion that the lower rates by that route for the longer haul through Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain to Atlanta are just and reasonable in and of themselves?

A. It is.

15. Q. Do those rates to Atlanta yield the carrier revenue in excess of the cost of transportation?

A. They do.

16. Q. Would those rates to Atlanta be made higher but for competition?

A. They would.

17. Q. Is a rate, in your opinion, reasonable, which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I do not think it is.

18. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. That is one of the factors that enters into the cost, but only one.

262 19. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. It is.

20. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

21. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

22. Q. Other things being equal, is not the cost of keeping the road in repair, or in good condition, greater the greater the length of the road?

A. It is.

23. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. It does.

24. Q. Other things being equal, does not distance add to the cost of building the road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Where all things are equal that is true.

25. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on long through hauls?

A. It is.

26. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio Rivers?

A. Continuously, since December 1865.

27. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. Well, that word "competition" is a very broad one. Sometimes there is competition of products as well as competition of lines, competition of markets, and letting the word "competition" include all branches of the subject, then I would answer that it has never been made except to meet competition—letting the word "competition" cover all branches of the subject—that is, competition of markets, product with product, competition of line and line, and competition of rail with water.

28. Q. Is there competition of markets without there being also competition in transportation?

263 A. Yes, sir.

29. Q. Well, name an instance.

A. We have right on our own line here two towns, selling the same product, competing with each other, shipping over the same road, both being local points. For instance, there is a pipe foundry at South Pittsburg and another at Bridgeport. Both are local to our line, and both of which compete strongly with each other in selling their pipes to the markets of the country.

30. Q. Is there any greater charge for the shorter than the longer haul?

A. No; in that case the charge is the same.

31. Q. I am referring to cases of a greater charge for the shorter haul. Is that greater charge ever made except in the case of competition in transportation, to your personal knowledge?

A. I can not for the moment call to mind such a case, though I am quite sure there have been such cases. There is a case in point from Nashville to Hickman. There is only one line from Nashville to Hickman, and yet the rates to Hickman are less than to points this side of Hickman; there is only one line; that is competition of market with market. Nashville reaches Hickman, Kentucky, over the eastern division of our road; St. Louis reaches Hickman not only by rail, but also by the Mississippi River boats, at low rates, so that Nashville would be unable to sell any goods in Hickman, and therefore we were forced to make low rates from Nashville to Hickman. They were made to meet the competition at St. Louis and other markets reaching Hickman by river. We do not make as low rates to the other points this side of Hickman, notwithstanding there is only one road between here and Hickman; no other line from here to Hickman. I never heard of freight going from Nashville to Hickman except over our road.

32. Q. Is that not a case of competition between your line to Hickman and the lines from St. Louis to Hickman?

A. It is what I call competition of market with market.

33. Q. Does it not also involve the competition between transportation lines from different markets?

A. Indirectly, it does; yes, that is true. St. Louis has her low rates.

34. Q. Is not a rate under which traffic will move, and which is not so high as to divert the traffic from other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir; I think it is.

264 35. Q. If the rule, that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other northeastern cities to Nashville, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of the traffic, and prevent diversion of its traffic to the other roads or lines?

A. It would; that is, it would be necessary to depart from that rule.

36. Q. In your direct examination, you named a number of lines that could be formed to Atlanta. Could not all those lines be formed to Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro with the Georgia railroads as the terminal carrier of such lines?

A. They could.

37. Q. Is not traffic transported from New York and other northeastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain under through bills of lading issued by the initial carrier at New York and other northeastern cities?

A. That is my understanding.

38. Q. Is not such traffic transported under through rates named in such bills of lading?

A. That is my information.

39. Q. Do the agents of the Nashville, Chattano'ga and St. Louis

Railway in the west, whom you spoke of, in your direct examination, who, I believe you stated, solicited business for Atlanta, solicit business for points beyond Atlanta on the Georgia Railroad?

A. Yes, sir.

40. Q. Do they solicit business for Stone Mountain, Covington, Conyers, Madison, Social Circle, and Greensboro?

A. They do.

41. Q. Are not the rates by all the all-rail lines from New York and other northeastern cities to Atlanta the same?

A. Yes, sir; they are intended to be so.

42. Q. Are not those rates the same now as they were when the Southern Railway and Steamship Association was in existence?

A. I think they are the same now as when that association ceased to exist, but much lower than when it began to exist.

43. Q. Are not those the rates which were established and promulgated by that association?

A. I think so.

265 44. Q. You stated in your direct examination that the average receipts per ton per mile on traffic in general and the estimated cost of carrying one ton one mile, could not be used as the standard in railroad rate making. Would not such data throw some light upon the question whether an existing rate was excessive or not?

A. It would be of some service to have such data, particularly when the question was being considered whether it would be best to meet competition or ignore it. Sometimes, particularly in competition with water lines, the rates go to an absolutely losing basis and it is thought best to ignore such competition and let the business go when the probabilities are that such a line would not be permanent. At other times, rather than yield to the water lines, valuable and important traffic and thereby allow the water lines to become permanent, I have known roads, managed by very able officers, to handle freight at what I thought was less than the cost, which is what I call a war measure.

45. Q. Have not railroads been in the habit of making out and recording this data as to average rec'ipts per ton per mile and estimating the cost of carrying per ton per mile, for a long period of time?

A. Yes, sir.

46. Q. As far back as 1880 and prior to that time?

A. Some roads have, I think, as far back as that.

47. Q. Are not the average receipts per ton per mile the result of accurate calculation?

A. I think so.

Redirect examination by Mr. BAXTER:

1. Q. What object do the railroad companies have in keeping and compiling statistics with reference to the number of tons carried one mile and the number of tons carried of freight earning revenue or the estimated average receipts per ton per mile or the estimated average cost of carrying one ton one mile?

A. I think more with a view of keeping expenses to a minimum and adjusting their expenses to their income, and a good many, I think, just with a theoretical turn of mind, they want to get a good deal of detailed information, although of no practical use to them after they get it.

2. Q. Did you ever know of a traffic manager or a general freight agent using those factors in the making of competitive rates?

A. No, sir; it is only considered when, as explained in the last
266 question, in being forced by water competition to make excessively low rates, to determine—that is, as far as possible—how much loss would result from handling the traffic.

NASHVILLE, TENNESSEE, *July 22, 1897.*

GEORGE P. BILES, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George P. Biles, 40; occupation, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company; residence, Newport, Kentucky.

2. Q. How long have you been connected with the railroad freight transportation business in the United States and in what capacities?

A. Since 1884, in various capacities, such as rate clerk; afterwards assistant general freight agent and since October, 1895, general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain more than to Atlanta. The rates from New York, Philadelphia, &c., via Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, Stone Mountain and Atlanta were as shown by the report and opinion of the commission, in 1892, as follows:

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	64	45	59	42½	41	65	83	82½
Madison	144	123	107	89	71	56	47	60	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	91	73	58	48	60	44	43	69	87	86
Conyers	138	119	105	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	132	114	101	85	71	58	45	57	47	44	69	80	89½
Atlanta	114	98	86	78	60	49	36	48	46	39	58	68	78

267 State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain as to make up for any loss of revenue that would otherwise result, and give your reasons for any opinion you may express.

A. If the rates were reduced from New York, Philadelphia, etc., to Greensboro, etc., it would not, in my opinion, have the effect of increasing or building up traffic at those points to any appreciable extent. My reason for this opinion is that the reduction in the rates would not have the effect of materially increasing the consumption of articles used at those points and in adjacent territory. The amount of business at those points is not of great volume because of the limited production.

4. Q. State whether said rates from New York, Philadelphia, etc., via

Charleston and Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just or unjust, reasonable or unreasonable, and give your reason for any opinion you may express.

A. In my opinion the rates from New York, Philadelphia, etc., to Greensboro, etc., are just and reasonable within themselves. My reason for this opinion is that the rates from and to the points named are relatively in line with the rates existing from New York, Philadelphia, etc., to other points similarly located in that section of the country.

5. State what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, etc., in transportation to Atlanta, Georgia, of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. I am unable to enumerate all of the lines which in 1892 competed from New [York], Philadelphia, etc., in the transportation to Atlanta, Georgia, of freight classified in the classes mentioned. The following, however, are some of the all-rail and water lines which now compete for this business. Some of them also competed for this traffic in 1892.

The all-rail routes are:

Richmond and Danville Dispatch.
Atlantic Coast Dispatch.
Seaboard Dispatch.
Southern States Dispatch.
Shenandoah Dispatch.

Rail and water routes:

Virginia and Tennessee Air Line.
Pennsylvania Southern Line.
Piedmont Air Line.
268 Seaboard Air Line.
Mallory Line.
Merchants and Miners Transportation Company.
Atlantic Coast Line.
Clyde Line.
Ocean Steamship Company.

6. Q. State what lines actually and actively competed in 1892 and now compete from Ohio River points and sections of the country other than New York, Philadelphia, etc., in transporting to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following are the names of the transportation lines which in 1892 competed and now compete for traffic from various Ohio River crossings as named to Atlanta:

From Cincinnati, Ohio:

Cincin'ati, New Orleans, and Texas Pacific Railway.
Louisville and Nashville Railroad.

From Louisville, Kentucky:

Louisville and Nashville Railroad.
In 1892 Louisville Southern Railroad, now known as the Southern Railway in Kentucky.
In 1892 Chesapeake, Ohio & Southwestern Railroad, now known as the Illinois Central Railroad.
(Louisville Division.)

From Evansville, Indiana:

Louisville and Nashville Railroad.

Ohio Valley Railway.
From Owensboro, Kentucky:
Louisville and Nashville Railroad.
In 1892 Louisville, St. Louis and Texas Railroad, now known as Louisville, Henderson & St. Louis Railroad.
From Henderson, Ky.:
Louisville and Nashville Railroad.
Ohio Valley Railway.
From Paducah, Kentucky:
In 1892 Chesapeake, Ohio & Southwestern Railroad, now known as Illinois Central Railroad. (Louisville Division.)
In 1892 Paducah, Tennessee and Alabama Railroad, now known as Nashville, Chattanooga and St. Louis Railway.
269 Illinois Central Railroad.
Mobile and Ohio Railroad.

7. Q. State whether or not the Cincinnati, New Orleans and Texas Pacific Railway and its connections actually and actively compete for the carriage of freight of the said various classes to Atlanta, from what cities?

A. The Cincinnati, New Orleans and Texas Pacific Railway Company and its connections actually and actively compete for traffic from Cincinnati and points from Northern and Northwestern States to Atlanta, Georgia. The Cincinnati, New Orleans and Texas Pacific Railway Company and its connections also compete for traffic from Louisville and Central Kentucky points to Atlanta, Georgia.

8. Q. Does said railroad and its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway Company and its connections have agents at the various points for the purpose of soliciting freight for their respective lines to Atlanta, Georgia. The Cincinnati, New Orleans and Texas Pacific Railway has resident agents at Cincinnati, Ohio, Lexington, Kentucky, and Chicago, Illinois. It also employs soliciting agents whose duty it is to travel throughout the States of Pennsylvania, Ohio, Michigan, Indiana, Illinois, and Kentucky in solicitation of freight from the various cities and towns in said States for Atlanta.

9. Q. Does said railway and its connections advertise at said cities for the transportation of said freights to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway publishes tariff rates, copies of which are on file in the Cincinnati, Lexington, and Chicago offices for public inspection. Copies of said tariffs are distributed to shippers and railroad agents in the different towns and cities of the States of Pennsylnania, Ohio, Michigan, Indiana, Illinois, and Kentucky.

10. Q. State whether or not the rates on freight of the various classes from New York, Philadelphia, etc., to Atlanta are controlled to any, and if so, to what extent by competition?

A. The rates of freight from New York, Philadelphia, etc., to Atlanta, Georgia, are controlled to a very great extent by competition. The rail lines themselves have such competition, and competition exists between the various water and rail lines. The water and rail lines produce competition as between themselves and the all rail routes. The rates on the

various classes of freight from the East are competitive to a greater or lesser extent with the rates on similar commodities shipped from Northern, Western, and Southern cities to Atlanta, Georgia.

270 11. Q. State whether competition, between carriers, whether by rail or by water, substantially affect the circumstances and conditions under which the transportation of freight is conducted.

A. In my opinion, competition between carriers, either by rail or water, substantially affects, directly or indirectly, in a number of ways, the circumstances and conditions under which the transportation of freight is conducted. For example, where two or more rail transportation lines compete with each other for freight traffic from and to certain points, one of the lines may inaugurate a special fast-train service for handling the business with a view of securing the bulk of the business. Such action will force its competitors to do likewise in order to secure some of the freight and an additional cost which such quick service would bring about.

12. Q. State whether there is any such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain as is sufficient to affect the rates charged by the lines from New York, Philadelphia, etc., via Charleston and Augusta, to those stations.

A. Competition at Greensboro, Madison, etc., is not of the same character as the competition which exists at Atlanta or Augusta. The points in question are located on one line only, with the exception of Madison, which is reached by the Central of Georgia Railroad and the Georgia Railroad, whereas in the case of Atlanta there are a number of railroads entering that city from the East, North, South, and West.

13. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore. Are the rates that are fixed by the Georgia Railroad Commission from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from Boston, New York, Philadelphia, and Baltimore to Atlanta, Georgia, are made by fixed differentials above the rates from said Eastern cities to Augusta, Georgia; water competition from Eastern cities to Augusta establishes the all rail rates from and to said points. Therefore water competition, from Eastern cities to Augusta, is a factor in the construction of the rates from Eastern cities to Atlanta. The water at transportation rates from the Eastern ports to Savannah, Georgia, plus the rates of the Georgia Railroad Commission, are also considered in fixing the all rail and rail and water rates from said Eastern points to Atlanta.

14. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this
271 cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think that there is anything further I can say in regard to this.

Cross-examination by Mr. SHAVER:

1. Q. In answering the direct interrogatories propounded to you, you read from a manuscript before you. How long ago did you prepare those answers?

A. Those answers were prepared on June 22.

2. Q. Were you furnished with copies of the interrogatories?

A. Yes, sir.

3. Q. In the event Atlanta merchants sell at Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro in competition with the local merchants at those points, would not a reduction in the rates at those points so as to make their rates not higher than the Atlanta rates be of great benefit to the local merchants at those points in that competition?

A. It would probably help the merchants to some extent.

4. Q. Does not the prosperity and growth of a locality depend largely or to some extent on the prosperity of its merchants and business men?

A. Well, that depends upon circumstances. It would be reasonable to suppose, I imagine, that if the merchants were tolerably successful that it would have some influence on the community in some cases, but not in all cases.

5. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at such points?

A. Not necessarily.

6. Q. My question was, as a general rule and in the absence of exceptional conditions, was not the natural tendency of a material reduction in rates towards improving and increasing the business of such point?

A. Well, that again depends on circumstances. Probably in limited cases it might have some general improvement, but I venture to say that to a large number of towns a general reduction in the rates would have no material effect. The transportation rates must be of such nature as to enable the carrier to give good service to these particular points. If the rates are reduced to a basis which might be only reasonably remunerative and in some cases hardly remunerative, why, it
272 appears to me that the carriers could not be as anxious, probably, to give as effective services, whereas if the rates were fair, it would enable them to give fairly good services, and at the same time in the building up of a community the railroad companies and the carriers themselves are a very important factor.

7. Q. You say that in the building up of a community railroads and carriers are a very important factor. Do not therefore the rates of transportation established by carriers have some effect in building up a community?

A. That depends, again. In a large number of cases in the South a reduction in the rates would scarcely have any effect whatever. As I said before, it does not follow that because transportation rates may be reduced that it would result in bringing about a new state of affairs to any marked degree.

8. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to any one of these localities and discriminatory against the other benefit the one and injure the other?

A. Well, if you are speaking of localities as sections of the country, I think probably that might have some effect.

9. Q. Do not the rates of transportation affect and enter into prices of goods on which those rates are charged?

A. Yes, sir, in some cases, but in a large number of cases the transportation rates do not affect the price of the articles that are sold over the counter in the store of a retail merchant.

10. Q. In this case, where you state the rates do not affect the price of the article sold over the counter to the consumer, do they not affect the cost of the article to the merchant?

A. Yes, sir; it affects the cost of the article to the merchant, but the consumer does not get the benefit. As a rule, if the reduction is made in the transportation rates, why, the merchants get the benefit of it and not the consumer.

11. Q. Do not lower prices of goods tend to bring the goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. There may be some truth in that, but transportation rates would not have that effect, because transportation rates are made per hundred pounds, whereas the articles, as a rule, are sold by weight or measurement. Therefore a reduction of a few cents per hundred pounds would not bring about any reduction or change in the retail price of those articles.

12. Q. Does not the prosperity of a road depend more upon the prosperity of the local stations along its entire line than on that of a few widely scattered trade centers or basing points?

273 A. A great many of the carriers have practically no local business. They have to depend on their through business. Other carriers have a fair local business, and of course a percentage of the gross earnings is due to local traffic. I believe that a great many of the carriers make special efforts to get people to emigrate. That is being done all over the South, with sometimes satisfactory results, and others fail to carry their point in this respect.

13. Q. Would not a system of rates which would tend to build up business at the local stations along the entire line of the road contribute more to the prosperity of a road than a system which discriminates against such localities in favor of widely separated trade centers or basing points?

A. That is a difficult question to answer. It depends entirely upon the circumstances and conditions forced. My experience is that reduced rates that have been or may be put in effect at local stations do not bring about satisfactory results. That is, it does not bring business there. People are not there and they do not go there, and would not go, no matter what rates you may establish, whether it is the one dollar per hundred or fifty cent' per hundred. It has no effect whatever.

14. Q. That is not an answer to my question. My question was whether a system of rates which would build up business at local stations along the entire line of the road contribute more to the prosperity of the road than a system which builds up widely separated trade centers or basing points at the expense of the intermediate points or territories?

A. You say a system of rates which would build up. I do not know that any system of rates could be put in effect which would build up the business of the local points as against the trade centers that you mention; I will say in explanation of that, that so far as the Cincinnati, New Orleans and Texas Pacific Railway Company is concerned, it does not charge higher rates to intermediate points in Tennessee than at Chattanooga, Tennessee. But it has not had the effect of increasing the local

business of these points, and that has not been a question of one year or two years. I have not seen any remarkable, in fact, I have not seen any increase in business, and so far as my knowledge goes I do not believe that the reduction to the local stations, which may be practically the same as to these trade centers, would bring about what you may term a general marked improvement at these local stations. People flock to these trade centers all the time. They do not care to get off in the country.

15. Q. You said that the Cincinnati, New Orleans and Texas
274 Pacific Railway Company makes no greater charge for the shorter than the longer haul at any point on its lines between *the* Cincinnati and Chattanooga. Does that road meet competition at Chattanooga?

A. Yes, sir; in transportation from Cincinnati.

16. Q. Does it not come in competition with the Louisville and Nashville Railroad and the Nashville, Chattanooga and St. Louis Railway in transportation between Cincinnati and Chattanooga?

A. Yes, sir.

17. Q. You testified that in your opinion the rates from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are just and reasonable in and of themselves. Is that also your opinion as to the lower rate for the longer haul through those points to Atlanta?

A. While the rates to Atlanta may not be reasonable, the figures as they now stand are the best that can be obtained.

18. Q. Would higher rates to Atlanta be charged but for competition?

A. I think so.

19. Q. Do those Atlanta rates yield the carrier any revenue above the cost of the service of the carriage?

A. I believe so.

20. Q. Is a rate in your opinion reasonable in and of itself which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. I should say not.

21. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost above the cost of the service of the carriage?

A. That is a very hard matter to determine. It is a very difficult matter to decide or to fix your rate as compared with the cost of service of operation. There are so many conditions surrounding this rate situation in regard to that, that it is a very difficult thing to form.

22. Q. Can it be ascertained whether a rate yields to the carrier an increase over and above the cost of the service of carriage without first ascertaining the cost of that service?

A. I think myself that that depends somewhat upon experience. If a new railroad is opened up, it has to fix its rates, we will say, to local points, to enable the carrier to meet the cost of operation. Now, the cost of operation has not been fixed, so, therefore, the rates will have to be fixed by the management as they will feel will bring about the desired result—I mean from a revenue standpoint, and which will meet all
275 the expenses. On the other hand, again, those rates may not be high enough to meet these expenses.

23. Q. Does not the cost or the expense of the service of transporta-

tion depend largely, or to some extent, on the length of the haul, other things being equal?

A. If you mean by that question, if freight can be handled for a longer distance for a less rate per ton per mile——

24. Q. I did not refer to the rate per ton per mile.

A. You referred to the distance, I understand.

25. Q. I will read the question again. (Counsel here repeated the question.)

A. I would like for you to explain that to me—what you mean by that.

26. Q. Well, all other things being equal, and the rate of speed being the same, the length of the train being the same, the quantity of the cars being the same, &c., would it not cost more to transport the train twenty miles than ten?

A. It would probably cost more in the aggregate.

27. Q. That is what I mean, in the aggregate; I do not refer to cost per mile.

A. It will cost more to run a train of twenty cars three hundred miles than a train of twenty cars fifty miles.

28. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Of course; it takes longer for a train to go a hundred miles, at the rate of fifty miles per hour, than it does to go fifty miles.

29. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

30. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, &c., greater the greater the length of the haul?

A. Yes, sir.

31. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. Yes, sir.

32. Q. Does it not require more locomotives and cars and crews for running trains on a long road than on a shorter road?

A. Do you mean in the aggregate or do you mean as compared with the distance? If you mean in the aggregate, I suppose it will cost more for the longer road than for the shorter road.

276 33. Q. I asked, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. Yes, sir.

34. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

35. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on a long through haul?

A. Yes, sir; I should say so.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio Rivers.

A. Since 1884.

36½. Q. Has the greater charge for the shorter than the longer haul

over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. I do not know that I do.

37. Q. Are not the rates by all the all-rail lines from New York and other Northeastern cities to Atlanta the same?

A. I imagine they are. The various rail lines publish their tariffs, which are supposed to be the same by all the all-rail lines.

38. Q. Are not the rates from New York and other Eastern cities via the South Atlantic coast ports, Charleston, Savannah, etc., and thence by rail to Atlanta, the same?

A. They are supposed to be.

39. Q. Were not those rates in 1892 the rates which were established and promulgated by the Southern Railway and Steamship Association?

A. The Southern Railway and Steamship Association at that time published the rates to Atlanta, Georgia. When I say "published," I mean as far as the lines themselves are concerned as to the various roads.

40. Q. Were not the rates from New York and other Eastern cities to Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro in 1892, and are they not now, made by combination of the through rates to Atlanta or Augusta plus the local rates back or on to those intermediate points, as the case may be?

A. The rates to those points are made on the lowest combination.

41. Q. Of through and local rates?

277 A. Of through rates to Atlanta and Augusta, plus the rates from those points.

42. Q. Are not the rates from New York to Stone Mountain, Conyers, Covington, Social Circle, Madison, and Greensboro what are termed local rates?

A. Yes, sir.

43. Q. Are not the rates from Augusta to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain local rates?

A. They are known as local rates or termed local rates.

44. Q. You named in your direct examination a number of lines both from the east and the west for Ohio River points that could be formed and which you stated competed for business between New York and other eastern cities and Cincinnati and western points to Atlanta. Can not all those lines also be formed to Stone Mountain, Covington, Conyers, Social Circle, Madison, and Greensboro by combinations with the Georgia Railroad as the terminal carrier?

A. I think so.

44. Q. Do not all those lines compete for business to Stone Mountain, Conyers, Social Circle, Madison, and Greensboro as well as to Atlanta?

A. I am not certain as to that, but I am of the opinion that they do.

45. Q. Is traffic transported from New York and other Eastern cities, and also from Cincinnati and Ohio River points to Stone Mountain, Conyers, Social Circle, Madison, and Greensboro under through bills naming through rates issued by the initial carrier?

A. Yes, sir.

46. Q. Do not the agents of the Cincinnati, New Orleans and Texas Pacific Railway Company solicit business to Stone Mountain, Conyers, Social Circle, Madison, and Greensboro as well as to Atlanta?

A. They do.

47. Q. Are not the rates to those points, Stone Mountain, etc., published and advertised as well as the rates to Atlanta?

A. They are.

48. Q. Does not the Cincinnati, New Orleans and Texas Pacific Railway Company compete for business to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain?

A. Yes, sir.

Redirect examination by Mr. BAXTER:

278 1. Q. What is the distance from Cincinnati to Chattanooga via the Cincinnati, New Orleans and Texas Pacific Railway Company?

A. 336 miles.

2. Q. How are rates made from Cincinnati to local stations on the Cincinnati, New Orleans and Texas Pacific Railway between Cincinnati and Chattanooga? Do they increase with the distance?

A. Yes, sir; according to distance.

3. Q. At what distance from Cincinnati on the Cincinnati, New Orleans and Texas Pacific Railway Company do the rates which are proportioned to distance become as high from Cincinnati as are rates from Cincinnati to Chattanooga?

A. Well, probably on some classes we may meet the Chattanooga rates at the distance of 125 miles south of Cincinnati. On other classes it may be 140 miles.

4. Q. At those local stations on the Cincinnati, New Orleans and Texas Pacific Railway between Cincinnati and Chattanooga, at which rates are as high as the rates from Cincinnati to Chattanooga, do the merchants at said local stations purchase their goods at Cincinnati or Chattanooga, or do they purchase them in the Eastern markets?

A. The purchases are made at various points. I do not think the merchants at the local stations on the Cincinnati, New Orleans and Texas Pacific Railway buy their goods in the Eastern markets. They get them from Chattanooga, or from Knoxville, or from Cincinnati, or from Louisville. They do not go so far for markets for their goods.

5. Q. What is the reason that they do not, if you know?

A. Well, I do not know exactly, except they have been in the habit of purchasing their goods from these various nearby trade centers and probably do not care to make any change.

6. Q. They have established their credit and commercial relations with the cities located near to them?

A. Yes, sir. They exchange their freight, you know. They buy from the man in Chattanooga and they sell him something in return.

Recross-examination by Mr. SHAVER:

1. Q. Do you know of your own personal knowledge that the merchants at these points intermediate between Cincinnati and Chattanooga, which have the same rates as Chattanooga, do not buy their supplies of goods at Cincinnati and Ohio River points, or in the East, in New York or other Eastern cities?

A. Well, I have not in view all merchants of the various towas along the lines of the road, but I think I am correct in stating that they buy chiefly from Cincinnati, Chattanooga, and Louisville.

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2. Q. Chiefly?

A. Yes, sir. Of course, they buy certain things at points, say, in Ohio, Indiana, and off the Ohio River, like agricultural implements, and something of that sort, but I think their boots and shoes and provisions generally are bought at these other towns that I have mentioned.

3. Q. Has the Cincinnati, New Orleans and Texas Pacific Railway Company suffered any great loss on material loss from charging rates to these intermediate points not higher than the rates to Chattanooga?

A. Well, we have suffered loss to the extent of the difference between the rates that are now in effect and higher rates which were in effect some years ago.

4. Q. How long since the Cincinnati, New Orleans & Texas Pacific Railway Company ceased charging higher rates to those intermediate points than to Chattanooga?

A. It was several years ago, but I cannot tell you just exactly when it was.

Redirect examination by Mr. BAXTER:

1. Q. Is it not the Cincinnati, New Orleans & Texas Pacific Railway Company in the hands of a receiver?

A. Yes, sir.

I, Frank Lyon, who was agreed upon by counsel for both parties to act as special examiner, as set forth in their foregoing stipulation, do hereby certify that I faithfully and truly and correctly took the testimony of the above-named witnesses in shorthand, and afterwads reduced it to typewriting, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This 24th day of August, 1897.

FRANK LYON,
Acting Special Examiner,
1317 F street NW., Washington, D. C.

284 EXHIBIT No. 1.—Filed by Carlton Hillyer, p. 107.

GEORGIA RAILROAD COMPANY,
Augusta, Ga., January 22, 1892.

Statement prepared by C. S. Sikes, traveling auditor, under the supervision of Carlton Hillyer, auditor, and with the advertisement of E. R. Dorsey, general freight agent, showing the relationship between the through and local freight business of the Georgia Railroad Company for the fiscal year ending June 30th, 1891:

LOCAL BUSINESS.

Westward freight from Augusta and points east to local stations on Georgia Railroad	$218,548 82
Eastward freight from local stations on Georgia Railroad to Augusta and points east	236,803 87
Eastward freight from roads west to local stations on Georgia Railroad	91,920 19
Westward freight from local stations on Georgia Railroad to roads west	48,868 68
Freight from station to station on Georgia Railroad	233,631 58
Total local business	829,773 14
Less local through freight to and from Atlanta, Athens, Washington, Milledgeville, and Macon, which enjoys through rates	79,967 00
Local tariff freights	749,806 14

THROUGH BUSINESS.

Westward freight from Augusta and points east to connecting roads west	79,947 17
Eastward freight from connecting roads west to Augusta and points east	371,557 12
Total through business	451,504 29
Add local through freight as mentioned above	79,967 00
Through tariff freights	531,471 29
Total freights	1,281,277 43

The above freights are exclusive of mail, express, and miscellaneous earnings, and are distributed according to classes, as follows:

Classes.	Local tariff freights.			Through tariff freights.			Total freights.				
	Ton mileage.	Revenue.	Average rate per ton per mile.	Ton mileage.	Revenue.	Average rate per ton per mile.	Ton mileage.	Revenue.	Average rate per ton per mile.	Revenue which would have accrued if local tonnage had been hauled at through rates.	Difference or loss which would have been suff'd by Ga. Rd. had local tonnage been hauled at through rates.
J. Cotton	3,072,196	$186,972	.06-09	2,847,068	$29,510	.01-04	5,919,264	$216,482	.03-66	$31,950	$155,022
K. Fertilizers	10,296,143	117,225	.01-14	7,854,456	50,533	.00-64	18,150,599	167,778	.00-92	65,895	51,330
N. Live Stock	491,732	12,889	.02-62	663,186	8,529	.00-29	1,154,918	21,418	.01-85	6,343	6,546
L. Coal	397,656	5,015	.01-26	9,020,116	80,347	.00-89	9,417,772	85,362	.00-91	3,539	1,476
1. Merchandise	458,709	43,714	.09-53	309,551	11,782	.03-81	768,251	55,496	.07-22	17,476	26,238
2. Merchandise	134,696	10,871	.08-07	266,648	8,928	.03-35	401,344	19,799	.04-93	4,512	6,359
3. Merchandise	239,553	15,337	.06-40	290,560	9,039	.03-11	529,913	24,376	.04-60	7,450	7,887
4. Merchandise	625,027	35,487	.05-67	339,132	9,514	.02-81	964,759	45,001	.04-66	17,580	17,907
5. Merchandise	370,663	16,010	.04-32	614,320	10,888	.01-77	984,983	26,898	.02-73	6,560	9,450
6. Merchandise	2,284,402	51,057	.02-23	3,345,630	35,948	.01-07	5,630,062	86,985	.01-55	24,443	26,594
A. Ties and bagging, etc	423,895	8,352	.01-97	504,005	4,304	.00-85	927,900	12,656	.01-36	3,603	4,749
B. Bacon, bulk meats, etc	740,153	15,476	.02-09	7,199,459	69,396	.00-97	7,939,612	84,872	.01-07	7,179	8,297
C. Flour, etc	1,624,968	29,608	.01-82	4,342,247	37,228	.00-86	5,967,215	66,836	.01-12	13,974	15,634
D. Grain, hay, etc	2,137,429	38,268	.01-79	12,165,463	96,098	.00-79	14,302,892	134,366	.00-94	16,885	21,383
E. Ale, beer, etc	10,256	364	.03-55	209,841	2,792	.01-33	220,097	3,156	.01-43	136	228
F. Flour in barrels, etc	98,148	1,784	.01-82	3,639,321	31,269	.00-86	3,737,469	33,053	.00-88	844	940
G. Cotton seed, etc	774,417	21,081	.02-72	110,687	2,773	.02-51	884,104	23,834	.02-70	19,412	1,649
H. Whiskey, etc	55,391	1,326	.02-54	421,428	9,754	.02-31	473,819	11,080	.02-34	1,210	116
M. O. P. R. Stone, etc	9,073,672	139,010	.01-53	2,521,372	22,839	.00-91	11,595,044	161,829	.01-40	82,570	56,440
Total	33,395,727	749,896	.02-25	56,655,290	531,471	.00-94	89,961,017	1,281,277	.01-42	331,561	418,245

286 EXHIBIT No. 2.—Filed by Carlton Hillyer, p. 109.

AUGUSTA, GA., *June 14th, 1897.*

Statement showing income and expenses of the Georgia Railroad from the beginning of the lease of said road, April 1st, 1881, to the close of the fiscal year ending June 30th, 1896.

Fiscal years.	Gross earnings.	Operating expenses.	Net earnings.
Year ended Mar. 31st, 1882	$1,326,052.11	$977,485.46	$348,566.65
Year ended Mar. 31st, 1883	1,314,482.17	851,453.21	463,028.96
Year ended Mar. 31st, 1884	1,324,246.82	846,701.50	477,545.32
Year ended Mar. 31st, 1885	1,286,485.08	820,240.23	466,244.85
Year ended Mar. 31st, 1886	1,322,818.97	861,502.67	461,316.30
Year ended Mar. 31st, 1887	1,397,735.41	903,835.96	493,897.45
Year ended Mar. 31st, 1888	1,514,272.56	957,645.41	556,627.15
15 m ths ending June 30, 1889	1,859,727.77	1,308,851.26	551,876.51
Year ended June 30th, 1890	1,683,636.14	1,178,771.00	504,865.14
Year ended June 30th, 1891	1,891,278.94	1,233,218.07	658,060.87
Year ended June 30th, 1892	1,585,506.69	1,271,865.20	313,641.43
Year ended June 30th, 1893	1,480,251.19	1,088,232.56	392,018.83
Year ended June 30th, 1894	1,367,184.03	869,985.72	497,200.91
Year ended June 30th, 1895	1,307,637.57	987,364.97	320,273.60
Year ended June 30th, 1896	1,479,792.02	1,048,672.46	431,119.56
Total	22,102,106.07	15,195,822.54	6,906,283.53

Fiscal years.	Net earnings.	Income from investments.	Total net income.
Year ended Mar. 31st, 1882	$348,566.65	$100,954.53	$449,521.18
Year ended Mar. 31st, 1883	463,028.96	156,683.07	619,712.03
Year ended Mar. 31st, 1884	477,545.32	114,682.25	592,227.57
Year ended Mar. 31st, 1885	466,244.85	92,268.00	558,512.85
Year ended Mar. 31st, 1886	461,316.30	77,268.00	538,584.30
Year ended Mar. 31st, 1887	493,897.45	54,768.00	548,665.45
Year ended Mar. 31st, 1888	556,627.15	57,746.75	614,373.90
15 m ths ending June 30, 1889	551,876.51	56,005.50	607,882.01
Year ended June 30th, 1890	504,865.14	61,175.50	566,040.64
Year ended June 30th, 1891	658,060.87	60,618.00	718,678.87
Year ended June 30th, 1892	313,641.43	61,685.00	375,326.43
Year ended June 30th, 1893	392,018.83	92,752.00	484,770.83
Year ended June 30th, 1894	497,200.91	92,752.00	589,952.91
Year ended June 30th, 1895	320,273.60	92,752.00	413,025.60
Year ended June 30th, 1896	431,119.56	92,752.00	523,871.56
Total	6,906,283.53	1,264,863.20	8,171,146.73

287 EXHIBIT No. 3.—Filed by Carlton Hillyer, p. 110.

Statement showing the loss sustained by the lessees of the Georgia Railroad from the operations of said railroad, from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

Rental of road for fifteen years and three months as per terms of lease for $600,000.00 per annum	$9,150,000.00
Deduct net income for said period	8,171,146.73
Excess of rental over net income	978,853.27
Deduct surplus material acquired by lease and credited to profit and loss	91,960.82
Loss in operations from beginning of lease of June 30th, 1896	886,892.45

EXHIBIT No. 4.—Filed by Carlton Hillyer, p. 111.

GEORGIA RAILROAD COMPANY,
Augusta, Ga., September 23, 1896.

Statement prepared by Carlton Hillyer, auditor Georgia Railroad Company, showing the relationship between certain movements of through and local freights to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894, the amount of freight business for said year being nearest to the yearly average of business for the three years ending June 30, 1896.

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Movements.	Mile tonnage.	Georgia Railroad revenue.	Average rate per ton per mile in cents.	Average through rate applied to local tonnage.	Georgia Railroad revenue which would have accrued on local tonnage if same had been hauled at average through rates.	Difference or loss of revenue which would have been suffered by Georgia R. R. if local tonnage had been hauled at average through rates.
From points east of Augusta:						
To local stations on main stem	1,224,424	$23,030	1.88	1.26	$15,427	$7,603
To local stations on branches	343,152	7,895	2.30	1.26	4,324	3,571
To Atlanta	2,212,401	27,817	1.26			
To points west of Atlanta	6,159,069	45,195	0.73			
From points west of Atlanta:						
To local stations on main stem	867,119	22,611	2.61	0.81	7,024	15,587
To local stations on branches	352,365	6,971	1.98	0.81	2,854	4,117
To Augusta	13,807,805	111,722	0.81			
To points east of Augusta	26,812,990	153,321	0.57			
From Augusta:						
To local stations on main stem	595,251	20,085	3.55	1.01	5,709	14,376
To local stations on branches	377,070	11,183	2.97	1.01	3,808	7,375
To Atlanta	56,435	2,076	3.68	1.01	570	1,506
To points west of Atlanta	1,138,872	11,475	1.01			
From Atlanta:						
To local stations on main stem	1,173,048	45,240	3.86	1.09	12,786	32,454
To local stations on branches	240,530	7,205	3.03	1.09	2,622	4,583
To Augusta	168,514	5,416	3.21	1.09	1,836	3,580
To points east of Augusta	1,073,762	11,677	1.09			
Total local freights	5,367,908	151,802	2.83		56,960	94,842
Total through freights	51,205,439	361,207	0.71			
Total of above movements	56,573,347	513,009	0.91		56,960	94,842

289 EXHIBIT No. 5.—Filed by Carlton Hillyer, p. 115.

GEORGIA RAILROAD COMPANY.
Augusta, Ga., September 23, 1896.

Statement prepared by Carlton Hillyer, auditor Georgia Railroad Company, showing the relationship between through and local freights of the Georgia Railroad Company, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1891, the amount of freight business for said year being nearest to the yearly average of business for the three years ending June 30, 1896.

Movements.	Mile tonnage.	Georgia Railroad revenue.	Average rate per ton per mile in cents.	Average through rate applied to local tonnage.	Georgia Railroad revenue which would have accrued on local tonnage if same had been handled at average through rates.	Difference of loss of revenue which would have been suffered by Georgia R. R. if local tonnage had been handled at average through rates.
Local freights	15,988,789	$418,531.74	2.62	0.82	$131,108.15	$287,423.59
Through freights	61,094,368	499,131.27	0.82	.....	.....	.....
Total freights for fiscal year	77,083,167	$917,663.01	1.19	.....	$131,108.15	$287,423.59

290 EXHIBIT No. 6.—Filed by Carlton Hillyer, p. 117.

GEORGIA RAILROAD COMPANY,
Augusta, Ga., September 23, 1896.

Statement prepared by Carlton Hillyer, auditor Georgia Railroad Company, showing the percentage of first-class freights as compared with total freights in certain movements of freights to, from, or passing through Augusta and Atlanta, exclusive of mail, express, and miscellaneous earnings, for the fiscal year ending June 30, 1894, the amount of freight business for said year being nearest to the yearly average of business for the three years ending June 30, 1896.

Movements.	Mile tonnage of first-class freights.	Percentage of first-class mile tonnage.	Mile tonnage of total freights.
From points east of Augusta:			
To local stations on main stem	22,634	1.85	1,224,424
To local stations on branches	6,998	2.04	343,152
To Atlanta	276,306	12.49	2,212,401
To points west of Atlanta	251,175	4.08	6,159,609
From points west of Atlanta:			
To local stations on main stem	13,371	1.54	867,119
To local stations on branches	9,409	2.69	352,365
To Augusta	66,739	0.48	13,897,805
To points east of Augusta	90,603	0.34	26,812,990
From Augusta:			
To local stations on main stem	10,166	1.80	565,251
To local stations on branches	6,542	1.73	377,070
To Atlanta	4,397	7.79	56,435
To points west of Atlanta	5,764	0.51	1,138,872
From Atlanta:			
To local stations on main stem	28,169	2.40	1,173,048
To local stations on branches	18,926	7.87	240,530
To Augusta	15,227	9.04	168,514
To points east of Augusta	29,253	2.72	1,073,762
Total of above movement	855,739	1.51	56,573,347

291 EXHIBIT No. 7.—Filed by Carlton Hillyer, p. 120.

FIXED AND OBLIGATORY CHARGES.

Statement showing the amount of taxes paid by the Georgia Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896.

The taxes here shown were charged to operating expenses, and hence the statement of income shows the net after the taxes have been paid.

Fiscal year ended March 31st, 1882	6,336.27
Fiscal year ended March 31st, 1883	6,478.64
Fiscal year ended March 31st, 1884	5,465.53
Fiscal year ended March 31st, 1885	5,719.40
Fiscal year ended March 31st, 1886	6,379.50
Fiscal year ended March 31st, 1887	6,117.44
Fiscal year ended March 31st, 1888	6,160.18
Fifteen months ended June 30th, 1889	7,626.77
Fiscal year ended June 30th, 1890	9,799.04
Fiscal year ended June 30th, 1891	10,302.42
Fiscal year ended June 30th, 1892	17,666.38
Fiscal year ended June 30th, 1893	32,637.02
Fiscal year ended June 30th, 1894	20,365.22
Fiscal year ended June 30th, 1895	26,602.05
Fiscal year ended June 30th, 1896	21,551.27
	$189,206.93

292 EXHIBIT No. 8.—Filed by Carlton Hillyer, p. 120.

FIXED AND OBLIGATORY CHARGES.

Statement showing the interest on bonds and other charges paid by the Georgia Railroad on account of the Gainesville, Jefferson and Southern Railroad and the Union Point and White Plains Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896. The amounts here shown are claims against said roads.

Fiscal year ending Mar. 31st, and after 1888, June 30th.	G., J. & S. R. R.	U. P. & W. P. R. R.	Total charges against G., J. & S. and U. P. & W. P. railroads.
1882 interest on bonds			
1883 interest on bonds			
1884 interest on bonds	18,375.00		18,375.00
1885 interest on bonds	22,238.29		22,238.29
1886 interest on bonds	24,800.00		24,800.00
1887 interest on bonds	24,800.00		24,800.00
1888 interest on bonds	24,800.00		24,800.00
1889 interest on bonds, 15 mos	27,425.00		27,425.00
1890 interest on bonds	24,800.00	2,100.00	26,900.00
1891 interest on bonds	24,800.00	4,200.00	29,000.00
1892 interest on bonds	24,800.00	4,200.00	29,000.00
1893 interest on bonds	24,800.00	4,200.00	29,000.00
1894 interest on bonds	24,800.00	4,200.00	29,000.00
1895 interest on bonds	24,800.00	4,200.00	29,000.00
1896 interest on bonds	21,877.50	4,200.00	26,077.50
Total interest on bonds	$313,115.79	$27,300.00	$340,415.79
Finishing and operating G., J. & S. R. R	37,649.07		
Collections made from U. P. & W. P. R. R		22,163.78	
Total amounts advanced by Georgia Railroad	$350,764.86	$5,136.22	$355,901.08

EXHIBIT No. 9.—Filed by Carlton Hillyer, p. 121.

AUGUSTA, GA., *June 14th, 1897.*

Statement showing amounts expended by Georgia Railroad on improvements in road and equipment from beginning of lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896. The amounts here shown were charged to operating expenses, and hence the statement of income shows the net after the payment of these amounts.

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Fiscal year ended March 31st, 1882	$207,370.67
Fiscal year ended March 31st, 1883	207,030.97
Fiscal year ended March 31st, 1884	81,964.28
Fiscal year ended March 31st, 1885	85,377.82
Fiscal year ended March 31st, 1886	104,188.87
Fiscal year ended March 31st, 1887	151,070.66
Fiscal year ended March 31st, 1888	165,145.98
Fifteen months ended June 30th, 1889	206,359.47
Fiscal year ended June 30th, 1890	208,136.61
Fiscal year ended June 30th, 1891	185,399.79
Fiscal year ended June 30th, 1892	256,445.09
Fiscal year ended June 30th, 1893	91,097.56
Fiscal year ended June 30th, 1894	48,925.40
Fiscal year ended June 30th, 1895	100,648.19
Fiscal year ended June 30th, 1896	95,056.03
Total	$2,194,217.39

EXHIBIT No. 10.—Filed by Carlton Hillyer, p. 122.

Statement showing total Georgia Railroad freight revenue and mile tonnage of freight-earning revenue carried by the Georgia Railroad from the beginning of the lease, April 1st, 1881, to the close of the fiscal year ended June 30th, 1896:

Fiscal year ended on March 31st, and after 1888, on June 30th.	Total freight revenue.	Mile tonnage of freight originating on the Georgia R. R.	Mile tonnage of freight received from connecting roads and other carriers.	Total mile tonnage.
1882	$947,624	10,905,639	34,799,435	45,705,074
1883	951,807	12,011,185	34,498,246	46,509,431
1884	929,928	11,677,918	41,552,920	53,230,838
1885	907,046	12,302,120	43,830,651	56,132,771
1886	950,209	12,704,767	43,836,388	56,541,155
1887	990,731	12,563,368	49,395,894	61,959,262
1888	1,089,321	14,945,345	49,954,063	64,899,408
1889	1,126,304	14,722,631	60,412,756	75,135,387
1890	1,202,266	16,385,122	65,215,900	81,601,022
1891	1,348,388	21,433,115	68,936,993	90,370,108
1892	1,113,082	17,739,026	63,332,208	81,091,234
1893	1,051,896	18,778,961	58,627,776	77,406,737
1894	986,067	14,132,140	63,360,118	77,492,258
1895	956,374	16,833,859	65,921,825	82,755,684
1896	1,052,836	16,375,191	72,650,218	89,025,409

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294 EXHIBIT No. 11.—Filed by Carlton Hillyer, p. 122.

Statement showing yearly averages of revenue, expenses, tons, trains, and miles for Georgia R. R. freight business as per reports to the Interstate Commerce Commission from the beginning of said reports in 1888 to the close of the fiscal year ended June 30th, 1896.

This statement shows the cost per ton mile and the cost per freight-train mile for the years during which the rules for computing the same were in operation.

Years ending June 30th—	Average distance haul per ton, in miles.	Average freight receipts per ton per mile, in cents.	Estimated cost of carrying one ton one mile, in cents.	Freight earnings per train mile.	Estimated cost of running a freight train one mile.
1888	135	1.60	1.02	1.29	0.82
1889	135	1.43	.92	1.36	0.89
1890	136	1.39	1.02	1.40	1.05
1891	135	1.41	.93	1.49	0.98
1892	114	1.29	1.04	1.34	1.18
1893	107	1.27	.91	1.21	0.87
1894	109	1.18	.....	1.21	.....
1895	117	1.08	.....	1.42	.....
1896	109	1.09	.....	1.26	.....

298 EXHIBIT No. 14.—Filed by R. E. Lutz, p. 169.

THE WESTERN RAILWAY OF ALABAMA AND
THE ATLANTA & WEST POINT R. R. CO.,
Office Traffic Manager, Montgomery, Ala., June 16, 1897.

From New York, N. Y., to—	Per 100 pounds. 1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.	Distance from New York.
B. and W. stations:														
Alapaha, Ga	126	108	92	70	55	42	40	38	29	27	60	68	49	384
Enigma, Ga	126	108	92	70	55	42	40	38	29	27	60	68	49	391
Brookfield, Ga	130	110	94	72	56	43	41	39	29	27	61	70	50	394
Tv. Ty., Ga	133	114	97	73	57	44	42	40	29	28	62	71	51	411
Sumner, Ga	135	115	99	74	59	46	44	41	30	28	64	72	53	417
Poulain, Ga	135	115	99	74	59	46	44	41	30	28	64	72	63	420
Isabella, Ga	138	118	102	75	60	47	45	42	30	28	65	73	54	423
Willingham, Ga	131	112	100	75	60	47	45	42	30	28	65	73	54	428
Davis, Ga	128	113	99	76	61	48	44	44	31	29	68	72	56	433
Augusta Southern:														
Richmond Ga	120	102	90	73	61	49	40	54	37.5	36	57	69	72.5	393
Hepzibah, Ga	123	105	93	76	64	51	42	56	38	36.5	60	72	75.5	398
Bath, Ga	126	108	94	79	65	52	43	57	39	37	61	75	75	401
Keysville, Ga	129	111	97	82	67	54	45	57	39.5	37.5	63	78	76	409
Matthews, Ga	132	113	99	84	68	54	45	57	39.5	37.5	64	80	76	414
Wrens, Ga	135	116	102	87	70	55	46	57	40	38.5	66	83	77.5	418
Stapleton, Ga	137	117	103	88	71	55	46	57	40	38.5	67	84	77.5	423
Avera, Ga	137	117	104	88	71	55	46	57	40.5	39	67	84	77.5	423
Gibson, Ga	138	119	105	89	72	55	46	57	40.5	39	68	85	78.5	418
Belle Springs, Ga	141	122	106	90	74	57	48	57	41	39.5	70	86	79	414
Mitchell, Ga	142	123	108	92	74	57	48	57	41	39	70	88	79	410
Agricola, Ga	142	123	109	92	74	57	48	57	41	39	70	88	79	407
Chalker, Ga	145	126	109	93	75	58	49	57	41	38.5	71	89	78.5	405
Warthen, Ga	146	127	110	91	75	58	49	56	40.5	38	71	87	77.5	398
Silas, Ga	143	123	108	88	73	58	49	53	39.5	36.5	69	84	75	391
Wrightsville and Tennille Ry.:														
Lindsay, Ga	148	120	105	86	71	57	48	51	39.5	35.5	67	82	75	388.5
Peacock, Ga	139	120	106	86	71	57	48	51	39.5	36.5	67	81	75	390.5
Harrison, Ga	137	121	106	89	73	59	48	53	40.5	38	68	80	77.5	394.5
Donovan, Ga	137	121	106	90	75	60	48	54	41	38.5	68	80	78.5	398.5
Wrightsville, Ga	134	119	103	88	74	60	47	54	41	38.5	67	78	78.5	401.5
Meadows, Ga	132	116	102	85	73	59	45	55	41	39	66	75	80	406
Lovett, Ga	132	116	102	85	73	59	45	56	41	39.5	66	75	80.5	408.5

316 *Final decree.*

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, The Georgia Railroad & Banking Company, The Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond & Danville Railroad Company and the Georgia Pacific Railroad Company, lessees of the Central Railroad of Georgia; D. H. Chamberlain, receiver, H. M. Comer, receiver, Reuben Foster and F. W. Huidekoper, receivers. } No. 525.

This cause came on to be heard before Hon. Wm. T. Newman, judge, etc., upon the petition or bill, the answers thereto, exhibits, the testimony, stipulations, and argument of counsel.

Whereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the matters of equity alleged in the petition or bill are fully denied in the answers and are not sustained by the proof, and therefore that the said petition or bill be dismissed, and that the injunction prayed for therein be refused.

It is further ordered, adjudged, and decreed by the court that the costs of this cause shall be taxed by the clerk to be paid out of the appropriation for expenses of the courts of the United States, as provided in section 16 of the act to regulate commerce.

In open court, July 6, 1898.

WM. T. NEWMAN,
U. S. Judge.

317 Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

Petition for appeal and grant of appeal.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad and Banking Company, et al. } In equity, No. 525.

Comes the Interstate Commerce Commission this the 6th day of July, 1898, by G. L. Bell, assistant United States attorney, and in open court applies for an appeal from the final decree therein to the United States circuit court of appeals for the fifth circuit, and the said petitioner, the Interstate Commerce Commission of the United States, being a department of the Government, and this appeal being entered as such, and it appearing that the matter in dispute in said cause exceeds the sum or value of five thousand dollars, exclusive of costs, it is therefore ordered that said

application for appeal be, and the same is hereby, granted and made returnable not exceeding thirty days from this date, and that the same be filed in this court.

This the 6th day of July, 1898. WM. T. NEWMAN,
United States Judge.

Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

321 *Citation.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, et al. } In equity, No. 525.

To The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad & Banking Company, The Louisville & Nashville Railroad Company and The Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond & Danville Railroad Company and the Georgia Pacific Railroad Company, lessees of the Central Railroad of Georgia; D. H. Chamberlain, receiver, H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers.

You are hereby cited and admonished to be and appear at the court room of the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, on the 6th day of August, 1898, pursuant to an appeal allowed and granted by the circuit court of the United States for the northern district of Georgia, at Atlanta, in the above entitled case, to show cause, if any there be, why the decree of said circuit court of the United States for the northern district of Georgia, at Atlanta, rendered on the 6th day of July, 1898, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Wm. T. Newman, United States district judge for the northern district of Georgia, this the 6th day of July, in the year of our Lord one thousand eight hundred and ninety-eight (1898).

WM. T. NEWMAN,
U. S. Judge.

Service.

Service of the above citation is hereby accepted and copy waived this the 14 day of July, 1898. ED. BAXTER,
Solr. for Defendants as of Record.

U. S. circuit court. Filed in clerk's office Jul. 6, 1898. O. C. Fuller, clerk.

UNITED STATES OF AMERICA,
Northern District of Georgia:

I, Olin C. Fuller, clerk of the circuit court of the United States of America for the northern district of Georgia, in the fifth circuit, do hereby certify that the foregoing pages numbered from 1 to 641 inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of The Interstate Commerce Commission against the Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville & Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad; The Richmond and Danville Railroad Company and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia; D. H. Chamberlain, receiver, H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of said court to be affixed, at the city of Atlanta, in the northern district of Georgia, in the fifth circuit, this 28th day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] OLIN C. FULLER, *Clerk.*

323 United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

MONDAY, *December 19th, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 751.

This cause was regularly called this day, and was argued by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees, when the further hearing was postponed until to-morrow.

November term, 1898.

[Extract from minutes.]

TUESDAY, *December 20, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 751.

This cause came on again to be heard this day, and was submitted to the court after further argument by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees.

324 November term, 1898.

[Extract from minutes.]

MARCH 21, 1899.

Decree.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als. } No. 751.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, at the costs of the appellant.

325 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 751.

Petition for appeal.—Filed April 12, 1899.

The Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said Commission, under the direction of the Attorney-General of the United States, represents that in the final decree of said circuit court of appeals rendered on the 21st day of March, 1899, there is manifest error to its injury; and therefore, being a department of the Government of the United States, it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

J. WARD GURLEY,
United States Attorney for the Eastern District of Louisiana.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

330 *United States circuit court of appeals, fifth circuit.*

November term, 1898.

[Extract from minutes.]

WEDNESDAY, *April 12, 1899.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY et als. } No. 751.

Order allowing appeal.

In this cause, the Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said

Commission, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 21st day of March, 1899, to the Supreme Court of the United States, and the said Interstate Commerce Commission, being a department of the Government, and it appearing that the matter in dispute in said cause exceeds the sum of $5,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 12th day of May, 1899.

DON A. PARDEE,
Circuit Judge.

APRIL *12th, 1899.*

346 *United States circuit court of appeals for the fifth circuit.*

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 346 pages, numbered from a to 345, inclusive, contain a true copy of the record upon which the cause was tried in the United States circuit court of appeals for the fifth circuit, and of all proceedings had, including the opinion of the court in the case of the Interstate Commerce Commission, appellant, vs. The Clyde Steamship Company et als., appellees, No. 751, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 8 day of May, A. D. 1899.

[SEAL.] J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

347 *Citation on appeal.*

The United States of America, fifth judicial circuit.

The President of the United States to The Clyde Steamship Company, The Georgia Railroad Company et al., or to Ed. Baxter, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellant, and you were appellees, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, this the 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

DON A. PARDEE,
Circuit Judge.

I hereby accept service of the above citation.

ED. BAXTER,
Solicitor for Appellees as shown of Record.

(Indorsed:) No. 751. United States circuit court of appeals, fifth circuit. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Co., The Georgia Railway Co. et al., appellees. Citation on appeal. Filed April 27, 1899. J. M. McKee, clerk. J. Ward Gurley, U. S. atty.: L. A. Shaver, solicitor.

349 In the Supreme Court of the United States. October Term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad Company, et al.	No. 307. (No. 751 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al.	No. 308. (No. 750 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, the Western Railway Company of Alabama, et al.	No. 309. (No. 752 in circuit court of appeals.)

Stipulation as to parts of record to be printed.

It is stipulated between the attorneys for the appellant and the appellees in the above stated cases that the following portions of the records in said cases be printed in the record in this court in case 308 only, and be omitted in printing the records in this court in cases 307 and 309, to wit:

350 1. The report and opinion of the Commission, which is the same in all three cases.

2. The opinion of the circuit court, which is the same in said three cases.

3. The opinion of the circuit court of appeals, which is the same in said three cases.

4. The stipulation entitled "Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526," and which was entered into in all three cases. Said stipulation appears on pages 94 and 95 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

5. The "Articles of association of the Southeastern Freight Association," which appear on pages from 262 to 266, inclusive, in the record in the circuit court of appeals in said case No. 308.

6. "An act to provide for the regulation of railroad freight and passenger tariffs," &c., in the State of Georgia, which appears in the record in the circuit court of appeals in said case No. 308, on pages from 314 to 321, inclusive.

7. The matter commencing with the words "Exhibit No. 6, filed by J. M. Brown," which embraces "Freight tariff classes—percentages," and also "Classified list of railroads in Georgia," which appears on pages from 305 to 308, inclusive, in the record in the circuit court of appeals in said case No. 308.

351 8. The assignment of errors which is the same in all three cases.

9. The matter entitled "The Southern States Freight Association. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 267 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

10. The matter entitled "The Southern States Freight Association. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia, to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 268 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

11. The matter entitled "Statement of average receipts per ton per mile, etc., of various railroads," which appears on pages 323 and 324 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

L. A. SHAVER,
Counsel for Commission.

ED. BAXTER,
Counsel for Carriers.

352 (Endorsed:) File No., 17421, 17422, 17423. Supreme Court U. S., October Term, 1899. Term Nos., 307, 308, and 309. The Interstate Commerce Commission, appellant, *vs.* the Clyde Steamship Co. et al., The Western & Atlantic R. R. Co. et al., and The Clyde Steamship Co. et al. Stipulation as to parts of records to be printed. Filed March 8, 1900.

(Indorsement on cover:) File No., 17421, U. S. C. C. of Appeals, 5th Circuit, Term No., 307. The Interstate Commerce Commission, appellant, *vs.* The Clyde Steamship Company, The Georgia Railroad Company, et al. Filed May 23, 1899. Office Supreme Court of U. S. received May 11, 1899.

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CLERK'S COPY. 8640

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 302. 69.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MAY 26, 1900.

(17,289.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 308.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 United States of America, fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court room of said court in the city of New Orleans.

Before the honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, the honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

THE INTERSTATE COMMERCE COMMISSION, appellant, *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY, The Louisville & Nashville Railroad Company, et als.	No. 750.

Be it remembered that heretofore, to wit, on the 29th day of July, 1898, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Georgia was filed in the office of the clerk of said United States circuit court of appeals in the words and figures following, to wit:

1 In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN AND ATLANTIC RAILROAD COMPANY; The Louisville and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway; The Cincinnati Southern Railway Company, and S. M. Felton, receiver.	In equity, No. 524.

To the circuit court of the United States, sitting in equity, within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893,

HUMBLY COMPLAINING,

showeth to your honors that the Western and Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta,

in the said State of Georgia; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under
2 and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the said State of Kentucky; that the Nashville, Chattanooga and St. Louis Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, having its principal office at Nashville, in the State of Tennessee; that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in the said State of Ohio, and the defendant, S. M. Felton, is the receiver thereof; that the Cincinnati Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio.

That the said corporate defendants were at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property by their several lines of railroad, under a common control, management, or arrangement for continuous carriage or shipment through several of the the United States, and particularly were the said defendants then engaged in the said business from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia, and as such common carriers were, during all the time aforesaid, and still are, subject to the provisions of the said act entitled "An act to regulate commerce," and said amendments thereto.

That the said corporate defendants were heretofore, to wit, on the 22d day of October, 1891, duly impleaded in a controversy not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of L. N. Trammell, Allen Fort, Virgil Powers, constituting and composing the railroad commission of Georgia, duly and legally created by the laws of the State of Georgia, for an alleged violation on the part of the said defendants of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A; that a copy of said petition, duly attested by the secretary of the said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Interstate Commerce Commission to each of the defendants aforesaid, as required by the thirteenth section of the said act.

That thereafterwards, to wit, on the 9th day of November, 1891, the Louisville and Nashville Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is
3 hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 16th day of November, 1891, the Nashville, Chattanooga and St. Louis Railway Company, in its own name

and as sole lessee of the Western and Atlantic Railroad, filed answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 23d day of November, 1891, the Western and Atlantic Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 18th day of January, 1892, the Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, at a special session thereof, duly and legally assembled for that purpose at the city of Atlanta, in the State of Georgia, on the 24th day of March, 1892, whereof all the parties had due and sufficient notice, when said complainants, the Georgia Railroad Commission, as well as the said defendants, the Western and Atlantic Railroad Company and the Louisville and Nashville Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That thereafterwards, to wit, on the 3rd day of September, 1892, the Louisville and Nashville Railroad Company, by its attorney, Ed. Baxter, filed a petition requesting a continuance of the said cause brought by the said Georgia Railroad Commission, as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made part of this petition, the same being marked Exhibit F.

That thereafterwards, to wit, on the 19th day of October, 1892, the said Commission duly formulated an order denying the said petition of the Louisville and Nashville Railroad Company, hereinabove referred to as a part hereof, as at large and more fully appears in and by said order on file in the office of the said Commission, a copy whereof is hereunto annexed and made part of this petition, the same being marked Exhibit G.

That at the said hearing it was made to appear to the satisfac-
4 tion of the said Commission that the said defendants had violated the provisions of the said act entitled "An act to regulate commerce" in certain respects, as was stated in the said petition herein referred to as a part hereof, and thereupon, on the 11th day of November, 1892, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties and made a report in writing thereon, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the said report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is

hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matter and things stated and charged in the said petition, based upon the findings and determination of the said Commission with respect thereto agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit I.

That thereafterwards, to wit, on the 11th day of November, 1892, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants, and thereupon the petitioner shows that it has not been made to appear to the said Commission that, although more than twenty days have elapsed since the service of the said order upon the said defendants, the said defendants have ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard and have willfully and knowingly violated and disobeyed the said order and notice as hereinbefore set forth, hitherto neglected and refused, and still do neglect and refuse to comply with the same, in this, that the defendants have not since, to wit, the 1st day of March, 1893, ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance over the same line in the same
5 direction to Atlanta, in the State of Georgia; the said defendants not having prior to, to wit, the 1st day of March, 1893, made application to the said Commission for relief under the proviso clause of the fourth section of the act to regulate commerce.

WHEREFORE THE PETITIONER PRAYS—

1. That a subpœna or other suitable process may issue according to the course of equity, requiring the Western and Atlantic Railroad Company, the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railroad Company, the Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and the Cincinnati Southern Railway Company, and S. M. Felton, of Cincinnati, in the State of Ohio, severally to appear at such time and place as this honorable court may determine, then and there

each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants, and attorneys from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum of money, not exceeding the sum of $500, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.] By EDWARD A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

7 EXHIBIT A.

8 L. N. TRAMMELL, ALLEN FORT, VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

The petition of the above-named complainants respectfully shows:

First. That they compose and constitute the railroad commission of the State of Georgia; that said commission has been duly and legally created by the laws of the State of Georgia, and that its duties under the laws of said State are to make reasonable and just rates of freight

and passenger tariffs, to be observed by all railroad companies doing business in this State on railroads thereof, and, among other matters, to investigate all through freight rates from points out of Georgia to points in Georgia; and whenever the said commission finds that the through rate charged into Georgia is, in their opinion, excessive or unreasonable or discriminating in its nature, they shall call the attention of the railroad officials in Georgia to the fact, and that, when such rates are not changed, it shall be the duty of the commission to present the facts to the Interstate Commerce Commission and appeal to it for relief.

This commission, therefore, having no personal or pecuniary interest in the matter herein set out, except to see that the law is enforced for the benefit of society in the discharge of the duties prescribed for them by the laws of the State of Georgia, come now, and in the public interest complain in their own name, but for the sole interest of the public, and say:

Second. That the defendants above named are common carriers and, under a common control, management, or arrangement for continuous carriage or shipment, are engaged in the transportation of passengers and property wholly by railroad between points south of the Ohio River in the State of Ohio and points in the State of Georgia, and as such common carriers are subject to the act to regulate commerce.

Third. That such (and said) common carriers, under such common control, management, or arrangement for continuous carriage, have made and fixed, and have heretofore, and do now charge, collect, and
9 receive from the people of this State the following-named rates for through freight shipped and transported by them from the city of Cincinnati, in the State of Ohio, to the termini of and stations on the Western and Atlantic Railroad in the State of Georgia, to wit:

Through rates of freight from Ohio River points to Western and Atlantic stations.

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	$1.09	$0.95	$0.84	$0.71	$0.59	$0.44	$0.34	$0.40	$0.42	$0.27½	$0.53	$0.57	$0.56
Adairsville	1.12	.98	.86	.73	.60	.45	.35	.41	.32½	.28	.54	.59	.57
Kingston	1.15	1.01	.88	.75	.61	.46	.36	.42	.52½	.28	.55	.61	.57
Cartersville	1.18	1.03	.90	.76	.62	.47	.37	.43	.34	.29	.56	.62	.59½
Acworth	1.24	1.07	.94	.78	.64	.49	.39	.45	.35	.30	.58	.64	.61
Marietta	1.27	1.09	.96	.79	.65	.50	.38	.45	.35	.30	.56	.65	.62
Atlanta	1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.46

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first-class, second-class, etc., and Class A, Class B, and C, and the figures in the lines opposite the name of the town or station mean so much, as expressed by said figures, on the hundred pounds of freight of each class.

And that the transportation of like kind of through freight is under substantially similar circumstances and conditions to such terminus and station on said Western and Atlantic Railroad, and that said carriers have not been authorized by your Commission to charge less for longer than shorter distances for the transportation of said through freight.

Petitioners further show that the city of Chattanooga, in the State of Tennessee, is the western terminus of said Western and Atlantic Railroad, one of the common carriers so engaged, aforesaid, in the transportation of passengers and property wholly by railroad under such common control, management, and arrangement for continuous carriage, and that

the city of Atlanta, in the State of Georgia, is the eastern terminus of the said railroad, and the two cities, which are the termini of said road, are located and distant from each other as follows, to wit: Chattanooga, by the line of railroad, is distant from Atlanta 50 miles.

And your petitioners show that, notwithstanding the town and station at Marietta is 20 miles west of Atlanta and 118 miles east of Chattanooga, and that Acworth is 35 miles west of Atlanta and 103 miles east of Chattanooga, and that Cartersville is 48 miles west of Atlanta and 90 miles east of Chattanooga, and that Kingston is 59 miles west of Atlanta and 79 miles east of Chattanooga, and that Adairsville is 69 miles west of Atlanta and 69 miles east of Chattanooga, and that Calhoun is 78 miles west of Atlanta and 60 miles east of Chattanooga, the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of Cincinnati and other Ohio River points to the towns and stations of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun are more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of Cincinnati (and other Ohio River points), which is the shipping point in both instances, and so the rate collected and charged for freight shipped from Cincinnati, Ohio, by the defendants to the towns and stations on the said railroad is greater than the rate collected and charged by them to the city of Atlanta, notwithstanding the fact that the city of Atlanta is at a greater distance from said shipping point, and there is no water competition.

Your petitioners say that, in their opinion, the rates of freight into the towns and stations on said railroad in the State of Georgia, as aforesaid, were unreasonable and discriminating in their nature, and your petitioners, as a commission, called the attention of the officials of the said Western and Atlantic Railroad Company to the fact, and urged upon them the propriety of changing such rate, but the said officials refused and declined to change the same, and continued and still continue to charge and collect the aforesaid rates of freight to the town and stations as aforesaid.

Whereupon petitioners, as the Railroad Commission of the State of Georgia, come and present the facts as aforesaid, and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia and to different towns and stations on the Western and Atlantic Railroad, so made and charged and collected by the carriers, as aforesaid, is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled "An act to regulate commerce."

Wherefore petitioners pray that the defendants may be required to answer the charge herein, and that after due hearing and investigation an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and to such other and further order as the Commission may deem necessary in the premises.

Atlanta, Georgia, this 16th day of October, 1891.

L. N. TRAMMELL.
ALLEN FORT.
VIRGIL POWERS.

STATE OF GEORGIA, *Fulton County:*

L. N. Trammell, being duly sworn, says that he is a member of the Georgia Railroad Commission, the complainants in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

L. M. TRAMMELL.

Subscribed and sworn to before me this 16th day of October, 1891.

[L. S.] BEN. J. DAVIS,
Notary Public, Fulton County, Ga.

11 EXHIBIT B.

12 The answer of the Louisville and Nashville Railroad Company to the petition filed before the Interstate Commerce Commission, by L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of Georgia, against The Western and Atlantic Railroad Company, this respondent, and others.

I.

Respondent admits that the petitioners constitute the railroad commission of the State of Georgia, but as to whether said commission has been duly and legally created and as to what are its legal duties respondent prefers that the laws creating the commission and defining its duties shall be allowed to speak for themselves.

II.

It is true that the defendants to said petition are common carriers, and are engaged, over their respective lines, in the transportation of passengers and property wholly by railroad, between points on the Ohio River and points in the State of Georgia, but said defendants are not under any common control, management, or arrangement for continuous carriage or shipment.

It is true that this defendant, in connection with the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad have, by agreement, made and fixed, and have heretofore and do now charge, collect, and receive from the people of the State of Georgia the rates for through freight shipped and transported by them over their respective lines from the city of Cincinnati, in the State of Ohio, to the termini of and stations on the Western and Atlantic Railroad, in the State of Georgia, as set out and shown in Schedule A, here filed and made part hereof.

III.

Respondent denies that the transportation of like kind of freight is done under substantially similar circumstances and conditions when done between points on the Ohio River and Atlanta, as when done between said Ohio River points and the stations mentioned in the petition, on the Western and Atlantic Railroad.

On the contrary, respondent avers that the transportation of like kind of freight between said Ohio River points and Atlanta is done under entirely different circumstances and conditions from those affecting the transportation from said Ohio River points to the stations mentioned in the petition.

13 The rates on freight from said Ohio River points to Atlanta are controlled entirely by the competition of lines which are rivals to the line formed by respondent's road, the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad, whereas no such competition exists between said Ohio River points and the stations mentioned in the petition.

IV.

Respondent admits that the city of Chattanooga, State of Tennessee, is the western terminus of said Western and Atlantic Railroad, and that the city of Atlanta is the eastern terminus of said railroad, and that Chattanooga is distant from Atlanta one hundred and thirty-eight (138) miles. Respondent admits that the other stations mentioned in the petition are distant from Atlanta and Chattanooga respectively as stated in said petition.

V.

It is true that the rates of freight charged, collected, and received by respondent and the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad for freight transported by continuous carriage from the city of Cincinnati and other Ohio River points to the stations mentioned in the petition are more and greater on each class mentioned in the petition than the amount charged and received for freight to Atlanta, which is a greater distance from the city of Cincinnati and other Ohio River points, notwithstanding the fact that there is no direct water competition at the city of Atlanta; but there is railroad competition at Atlanta from other lines, which is just as effective as water competition, and some of those lines are not subject to the control of the Interstate Commerce Commission.

VI.

Respondent denies that the rates of freight in which this respondent participates, as aforesaid, are unreasonable and discriminating in their nature. On the contrary, respondent avers that they are fair and reasonable and equal and open to everyone, and that they do not unjustly discriminate against any person or place.

VII.

Respondent is informed that petitioners did call the attention of the officials of the Western and Atlantic Railroad to the fact that higher rates were being charged for shorter distances than for longer distances, meaning the rates charged to the stations mentioned in the petition, and

14 that petitioners did urge upon said officials the propriety of changing such rates, and that said officials refused and declined to change the same, and still continue to charge and collect the aforesaid rates of freight to the stations mentioned in the petition.

A meeting was held in Atlanta in April, 1891, in response to a summons from the commissioners, at which meeting all of the railroads operated in Georgia were represented, and, after a full explanation and discussion of the matter, it was the opinion of all of the officials representing said railroads that the rates complained of in the petition, as well as certain rates on other lines, were made upon a fair and reasonable basis, and that they ought to be adhered to.

STATE OF KENTUCKY, *County of Jefferson:*

S. R. Knott, first vice-president of the Louisville and Nashville Railroad Company, the above-named respondent, being duly sworn, says that the matter set forth in the foregoing answer are true, as he verily believes.

S. R. KNOTT,
First Vice-President.

Subscribed and sworn to before me this 5th day of November, 1891.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public.

[Form 826.]

EXHIBIT A.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
OFFICE OF GENERAL FREIGHT AGENT,
Louisville, Ky., November 5, 1891.

Statement of freight rates in effect from Cincinnati, Ohio; Louisville, Ky., and Evansville, Ind., to the stations on the Western and Atlantic Railway named below.

	In cents, per hundred pounds.												Per barrel.
Classes	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	109	95	84	71	59	44	34	49	32	27½	53	57	56
Adairsville, Ga	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston, Ga	115	101	88	75	61	46	36	42	32½	28	55	61	57
Cartersville, Ga	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth, Ga	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta, Ga	127	109	96	79	65	50	38	45	35	30	56	65	62
Atlanta, Ga	107	92	81	68	56	46	28	35	28	24	48	53	48

15 EXHIBIT C.

16 L. N. TRAMMEL, ALLEN FORT, VIRGIL Powers, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

The answer of the above-named Nashville, Chattanooga and St. Louis Railway, in its own name and as sole lessee of the Western and Atlantic Railroad, to the petition filed before the Interstate Commerce Commission.

The said Nashville, Chattanooga and St. Louis Railway for answer says: That the petition fails to allege that the respective freights mentioned were of like quantity and of the same class; it fails to show that shipments are made to the different stations on the Western and Atlantic Railroad set out under like conditions, and the petition must state that the shipments are made under like conditions; the petition fails to set out that shipments to the several stations are made by the same kind of trains; the petition does not allege that the discriminations complained of are unjust, but merely that, in the petitioners' minds, the rates were unreasonable and discriminating.

Said railway denies that it is, in its own right or as lessee of the Western and Atlantic Railroad, under the common control or management of any of the other defendants.

Said railway denies that under the tariff now in effect the rates from Cincinnati, Ohio, to the points mentioned in the petition are correctly given in the petition.

Said railway denies that the transportation is under substantially similar circumstances from Cincinnati to the stations on the Western and Atlantic Railroad.

Said railway denies that it has been guilty of any unjust discrimination as set out in the petition, and denies that greater rates are charged for short hauls of the same quantity and under like conditions and circumstances.

And said railway denies that it has violated any provision of the act of Congress entitled "An act to regulate commerce."

17 And having answered all allegations of the petition, said railway prays to be dismissed.

This November the 12th, 1891.

EAST & FOGG,
General Counsel.

STATE OF TENNESSEE, *Davidson County:*

J. W. Thomas, being duly sworn, says that he is the president of the Nashville, Chattanooga and St. Louis Railway, a respondent in this pro-

ceeding, and that such railway is sole lessee of the Western and Atlantic Railroad Company, a defendant in the proceeding, and that the matters set forth in the foregoing answer are true to the best of his knowledge and belief.

J. W. THOMAS.

Subscribed and sworn to before me this November 12, 1891.

[SEAL.] ROY FITZPATRICK,
Notary Public.

19 EXHIBIT D.

20 WESTERN AND ATLANTIC RAILROAD,
Atlanta, Ga., November 21, 1891.

[J. L. Dickey, general freight agent.]

DEAR SIR: The Western and Atlantic Railroad beg to file herewith answer to the complaint of the honorable the Railroad Commission of Georgia, dated October 16, 1891, and filed with your honorable body, the Interstate Commerce Commission of the United States, and charging this company with being a party to rates which were unreasonable and discriminating in their nature, in that the rates from the city of Cincinnati, Ohio, to the towns of Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, situated upon the line of the Western and Atlantic Railroad west of its eastern termini, the city of Atlanta, were higher than to the city of Atlanta, said city being further from shipping point than intermediate stations named.

The Western and Atlantic Railroad answers as follows, viz:

First. That it is not a party to any through rates from the city of Cincinnati to any of the intermediate stations named, having no joint through tariff with any connecting lines between said city and stations referred to, and that the rates from Cincinnati to said stations are made by adding the rates from Chattanooga, the western termini of the Western and Atlantic Railroad, to the through rates from Cincinnati to Chattanooga. The figures shown in said tariff of through rates from Cincinnati to Chattanooga being familiar to your honorable body and on file in your office, they are not here set forth. The rates from Chattanooga to all local stations on the Western and Atlantic Railroad are also on file in your office, and are in fact the standard rates of the Railroad Commission of Georgia.

Second. That the Railroad Commission of Georgia erred in their statement that the rates to the city of Atlanta were not influenced by water lines. As is well known to your Commission, in construction of rates from Western trade centers, as well as from the Eastern cities, to the city of Atlanta due regard is given to water-and-rail combinations. Indeed, it could not be otherwise, from the fact that the city of Atlanta has direct access to Gulf and South Atlantic ports by immediate and continuous rail lines, viz: The Central Railroad of Georgia to the port of Savannah, by the East Tennessee, Virginia and Georgia to the port of Brunswick, by the Western of Alabama to Montgomery, thence by the Alabama River to the port of Mobile, by the Georgia Railroad to Augusta, thence

via the Savannah River to Savannah, by the Georgia Pacific to
21 the Mississippi River at Greenville, Miss., and by the East Tennessee, Virginia, and Georgia to the Mississippi River at Memphis, Tenn., besides other connecting lines working directly to Gulf and South Atlantic ports, viz, the Georgia and South Carolina Railroads to the port of Charleston, the Georgia and Port Royal and Augusta to the port of Port Royal, the Western of Alabama and the Louisville and Nashville railroads to the ports of New Orleans, Pensacola, and Mobile, the East Tennessee, Virginia and Georgia and Norfolk and Western Railroad to the port of Norfolk, and the Richmond and Danville to the port of West Point. It appears, therefore, unreasonable to assert that water competition has nothing to do with fixing the rates to Atlanta. The efforts to properly correlate the rates from east and northwest to points embraced in the territory south and east of the Ohio and Mississippi rivers, and west of the Potomac, have engaged the attention of the best railroad talent in the territory for the past twenty years, Atlanta being a pivotal point, Baltimore on the east, Cincinnati, Louisville, Evansville, etc., on the northwest. Distance from Atlanta being approximately the same according to transportation methods of computing distance by rail and water, the rates from Baltimore to Atlanta have been fixed the same as from Cincinnati, Louisville, etc., to Atlanta, and a large number of principal points, such as Macon, Columbus, Augusta, Athens, Milledgeville, Montgomery, Chattanooga, and Birmingham have been adjusted on that basis. Your honorable body will therefore readily perceive the great confusion which would follow the disturbance of this basis. This, however, would not be an argument against your interference if the rates within themselves were not properly fixed, all circumstances considered.

This whole matter has been carefully investigated in every detail by your honorable board, and has so far had your sanction and approval. You have not seen proper to order that rates to intermediate stations on the Western and Atlantic Railroad from Western points be brought down to the level of through competitive rates to the city of Atlanta. Considering the importance of this city, with her eight systems of converging and diverging lines as a commercial center, with water competition bearing directly upon the adjustment of her rates, and the very terms of the interstate-commerce law itself exempting the Western and Atlantic Railroad from the operation of the fourth clause of said act.

Third. The policy of the Western and Atlantic Railroad has been and is to give to the towns situated upon its line as favorable rates as are compatible with the successful operation of the road, and it is a gratifying circumstance that no community upon its line has lodged any complaints with the Interstate Commission. The situation in the South with reference to volume of traffic, both passenger and freight, is such that if the leveling process should have to be adhered to it would have to be upward instead of downward, as you have ascertained by investi-
22 gation and, as I understand, so considered. In this connection, and bearing directly upon the case, I invite your attention to the testimony of the Hon. Virgil Powers, then commissioner of the Southern Railway and Steamship Association, now one of the commissioners of

Georgia, taken before your honorable body in the city of Washington in the early part of 1887.

Fourth. It is a matter of actual fact that the city of Atlanta, in its corporate capacity, contributed in bonds $300,000 to aid in building the Richmond and Charlotte Air Line Railroad, now styled the Richmond and Charlotte Division of the Richmond and Danville Railroad. It also, in its corporate capacity, contributed in bonds $300,000 to aid in building the Georgia Western Railroad, now styled the Georgia Pacific Railway, and its citizens contributed almost, if not quite, $500,000 to the building of the Atlanta and Florida Railroad. Therefore the citizens of Atlanta have, through official municipal action or in their private capacity, contributed over $1,000,000 to the building of railroads entering the city, which built up towns on their lines not before in existence and largely increased in population and wealth other towns already built. On the contrary, the towns of Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, situated upon the line of the Western and Atlantic Railroad northwest of Atlanta, have never contributed a dollar to the building of any railroad which affected the through traffic of said towns. As a matter of equity, therefore, it would be wrong to punish the city or citizens of Atlanta by insisting that the rates of the towns above mentioned should be made equal to the rates to Atlanta. Your honorable body can readily see the justice of this argument without further elaboration of it on my part.

Fifth. The Western and Atlantic Railroad positively states and avers that in establishing its rates it has endeavored to conform to the spirit and intent of the interstate-commerce act, and that its rates within themselves are reasonable and just, and it therefore respectfully prays that its rate adjustment be not disturbed and that the petition of complainants be not granted.

Respectfully submitted.

JAMES L. DICKEY,
General Freight Agent.

EDWIN A. MOSELY, Esq.,
Secretary Interstate Commerce Commission,
Washington, D. C.

Personally appeared before me, a notary public of Fulton County, Ga., James L. Dickey, general freight agent of the Western and Atlantic Railroad, who on oath says he verily believes that the foregoing is true.

JAMES L. DICKEY.

Sworn and subscribed to before me this 21st day of November, 1891.

[SEAL.] GEORGE M. BROWN.
Notary Public in and for Fulton County, Ga.

23 EXHIBIT E.

24 Before the Interstate Commerce Commission.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY; THE LOUISVILLE and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company (lessees of the Cincinnati Southern Railway), and The Cincinnati Southern Railway Company.

Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

Now comes the Cincinnati, New Orleans and Texas Pacific Railway Company, and for answer says:

First. Defendant admits that the petitioners are the railroad commission of Georgia.

Second. Defendant admits that the defendants named are common carriers, but it says that they are not under any common control or management.

It says that passengers and property are transported by continuous carriage or shipment by defendants between points on and south of the Ohio River and points in the State of Georgia.

Third. Defendant says that the through rates of freight named in the third paragraph of the complaint are not correct. It says that the rates to Marietta and Atlanta are made under dissimilar circumstances and conditions from the rates made to the other points named in said petition, and that such rates are not in violation of the fourth clause of the act to regulate commerce. It denies that any of its rates of freight are unreasonable or unjustly discriminating in their nature.

And having fully answered, defendant prays hence to be dismissed at its costs.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

BY EDWARD COLSTON,
General Counsel.

25 STATE OF OHIO, *Hamilton County, ss:*

C. C. Harvey, being duly sworn, says that he is vice-president of the Cincinnati, New Orleans and Texas Pacific Railway Company; that the foregoing answer is true, as he verily believes.

C. C. HARVEY.

Sworn to before me and subscribed in my presence this 12th day of January, A. D. 1892.

[SEAL.] CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

Copy of the foregoing answer mailed to the petitioners at Atlanta, Ga., this 12th day of January, A. D. 1892.

27 EXHIBIT F.

28 [Louisville and Nashville R. R. Company.]

OFFICE OF DISTRICT ATTORNEY,
Nashville, Tenn., Sept. 3, 1892.

Ga. R. R. Commission *vs.* W. & A. and L. & N. R. R. Cos. et al., 7897.
Ga. R. R. Commission *vs.* Clyde S. S. Co., L. & N. R. R., et al., 7894.
Ga. R. R. Commission *vs.* Clyde S. S. Co., So. Car. Rd., et al., 7980.
Ga. R. R. Commission *vs.* L. & N. and N. C. & St. L. Ry. et al., 7980.
Ga. R. R. Commission *vs.* So. Car. R. R. and L. and N. R. R. et al., 7981.

DEAR SIR: In reply to your telegram of 24th ult.:

These cases involve the same question as the Social Circle case, which has been prepared for trial, with the hope that it can be heard at the approaching term of the U. S. Supreme Court. Mr. Safford writes me that his health is such that he can not argue the Social Circle case for several weeks, but I am in hopes that he will recover in time to argue that case so as to get it heard at the approaching term of the U. S. Supreme Court. The decision of that case by the Supreme Court will virtually settle all of these cases, and I respectfully request that the Commission continue these cases, say for 90 days, or until we can see if the Social Circle case can be heard by the Supreme Court at the approaching term. Will you kindly present this application for me.

Yours truly,

ED. BAXTER,
S.,
District Attorney.

EDW. A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission,
Washington, D. C.

29 EXHIBIT G.

30 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of October, A. D. 1892.

Present: Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Commissioners.

THE GEORGIA RAILROAD COMMISSION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al., and six other cases.

On reading the application of Edward Baxter, esq., counsel for the above-named defendant, for postponement of the decision of these cases for ninety days, or until after the determination of the so-called Social Circle case, entitled upon the record "Interstate Commerce Commission against The Cincinnati, New Orleans and Texas Pacific Railway Company et al.," and now pending in the United States circuit court for the northern district of Georgia,

It is ordered, That said application be, and is hereby, denied.

31 EXHIBIT H. 17

18650——2

BEFORE THE

Interstate Commerce Commission.

[No. 314.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia.

[No. 315.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE OCEAN STEAMSHIP COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY and THE RICHMOND & DANVILLE RAILROAD COMPANY, Lessees of the Central Railroad of Georgia.

[No. 316.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, THE CINCINNATI SOUTHERN RAILWAY COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY and THE RICHMOND & DANVILLE RAILROAD COMPANY, Lessees of the Central Railroad of Georgia.

[No. 317.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE WESTERN & ATLANTIC RAILROAD COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, and THE CINCINNATI SOUTHERN RAILWAY COMPANY.

[No. 324.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia, THE ATLANTA & WEST POINT RAILROAD COMPANY, and THE WESTERN RAILWAY COMPANY OF ALABAMA.

[No. 325.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Rail-road Commission of Georgia,

v.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE NASHVILLE, CHATTANOOGA & St. LOUIS RAILWAY COMPANY, Individually and as Lessee of the Western & Atlantic Rail-road, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, THE CINCINNATI SOUTHERN RAILWAY COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, and THE WESTERN RAILWAY COMPANY OF ALABAMA.

[No. 326.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Rail-road Commission of Georgia,

v.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY, and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia, THE ATLANTA & WEST POINT RAILROAD COMPANY and THE WESTERN RAILWAY COMPANY OF ALABAMA.

Complaints in Nos. 314, 315, 316 and 317 filed October 22, 1891.—Answers filed November 1891, to January 18, 1892.—Also on March 25, 1892.—Complaints in Nos. 324, 325 and 326 filed January 20, 1892.—Answers filed February 15 to March 25, 1892.—Hearing at Atlanta, Ga., March 24, 25, 1892.—Briefs filed, July 1 to Aug. 24, 1892.—Decided November 11, 1892.

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1. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.
2. The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section of the Act to Regulate Commerce was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.
3. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.
4. The second, third and fourth sections of the Act to Regulate Commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation considered and criticised.
5. The fourth section of the Act to Regulate Commerce construed, and the principles laid down in *Re Petitions of Louisville & Nashville R. Co.*, 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31, reaffirmed, except the rule therein whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases" of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.
6. The competition of carriers subject to the Act to Regulate Commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.
7. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions

lar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.

The carrier has the right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to Regulate Commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar and carriers must not charge *less for the longer distance* except upon the order of this Commission.

9. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.

10. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317 and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

COPY BOUND CLOSE IN CENTER

William A. Little and *Robert Berner*, for Complainant.
James T. Worthington, for R. & D. R. R. Co., Ga. P. Ry. Co. and C. R. R. & Bkg. Co. of Ga.
Thomas Cobb Jackson, for Receivers of C R. R. & Bkg. Co. of Ga.
Calhoun, King & Spalding, for A. & W. P. R. R. Co.
George P. Harrison, for W. Ry. of Ala.
Joseph B. Cumming and *Bryan Cumming*, for Ga. R. R. and Ga. R. R. & Bkg. Co.
William M. Baxter, for E. T. V. & G. Ry. Co.
Ed. Baxter, for L. & N. R. R. Co.
Brawley & Barnwell, for Receiver of S. C. Ry. Co.
Edward Colston, for C. N. O. & T. P. Ry. Co.
East & Fogg, for N. C. & St. L. Ry. Co., and W. & A. R. R.
Payne & Tye, for W. & A. R. R.

REPORT AND OPINION OF THE COMMISSION.

HEARLEY, *Commissioner:*

The complaints in the above entitled cases, brought by the members and in the name of the Railroad Commission of the state of Georgia, allege that rates charged by the defendants for the transportation of freights from Cincinnati and other Ohio river points and from New York and other North Atlantic ports to various named places, nearly all within the state of Georgia, are "unreasonable, discriminating and in direct violation of section four of the Act to Regulate Commerce."

The violations of law alleged in the several complaints being of the same general character, differing only as to points and routes, it was understood at the hearing that the testimony taken in each case would be considered in the others so far as applicable, and it is proper, therefore, that all these cases should be embraced in the same decision.

The main question presented by the pleadings is whether charges which are greater for shorter than for longer distances in the same direction over the defendant lines are unlawful under the statute.

The defendants in their answers deny that transportation to the longer and shorter dis-

tance points is under substantially similar circumstances and conditions, and that therefore the greater charges for shorter distances complained of do not contravene the provisions of the Act to Regulate Commerce. The principal grounds on which this denial is based are the competition of all rail and part rail and part water lines from the same point of consignment to the same point of destination; the competition of all rail and part rail and part water lines from different points of consignment to the same destination; and the influence of water routes which either reach the point of destination direct, or deliver to a connecting carrier at a point in the same territory.

Still another ground of defense was set up in some of the cases, that property destined to intermediate points is not carried under circumstances and conditions substantially similar to those applying at the longer distance points because through rates are given only to the latter, while rates to the shorter distance points are made up of a through rate in effect to a basing point plus local rates of the terminal carrier therefrom.

There are, however, two minor questions to be considered: 1. Is the complainant authorized to bring and maintain these proceedings? 2. Are certain of the defendants common carriers over the line between points mentioned?

The Georgia Railroad Commission, complainant herein, is directed by a statute of the state of Georgia to bring complaint before this Commission whenever, after failure to obtain a satisfactory adjustment of rates, it finds through rates charged into Georgia to be excessive, unreasonable or discriminating, and by section thirteen of the Act to Regulate Commerce, this Commission is directed to investigate any complaint forwarded by the Railroad Commission of any state or territory. It is immaterial whether the complainant be the state Railroad Commission itself, or the parties on whose behalf it requests the investigation to be made. The Georgia Railroad Commission is a proper complainant in these proceedings.

As to the second of the minor questions, whether certain of the defendants, to wit, the Georgia Railroad & Banking Company, the Central Railroad & Banking Company, the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company, are common carriers controlling rates and operating roads parts of through lines between points of shipment and destination, it seems sufficient to hold generally that only those defendants who are in any degree responsible for transportation charges over the respective roads will be expected to comply with any order for the re-adjustment of those charges which may hereafter be issued in these proceedings. It was claimed on the hearing that the defendant, the Central Railroad & Banking Company of Georgia, was then in the hands of receivers, and not properly before the Commission. That Company was served with a copy of each complaint in which it was interested and before the receivers assumed control of its affairs; answers were filed on its behalf, and the receivers afterwards appointed were represented by counsel at the hearing. Under these facts the proceedings may well go on without a present determination whether a regulating order in the case would affect the receivers without an order of the court which appointed them. As a general proposition we see no reason why the fact of a receivership subsequent to complaint should interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

Another question in the cases is whether the transportation of property over the roads composing the respective through lines to the intermediate points is conducted under a common control, management, or arrangement for continuous carriage or shipment, but this question is raised by the defendants in connection with the main point in controversy, and should not be determined until after the facts in the cases are found and stated.

In view of the fact that the issues present mainly a single question of violation of the fourth section, the decision of which will also involve the disposition of the subsidiary matters of unreasonable and discriminating rates alleged and denied herein, it seems unnecessary to further analyze the pleadings. The respective routes, points and rates involved in the several cases are described in the following statement of facts, rates to points termed shorter distance points being those of which complaint is made. The cases will, with a single exception, be taken up in the order in which they were heard.

FACTS.

Case No. 317.

1. In this case the route is all rail from Cincinnati or other places called "Ohio river points" over either the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga or Boyce, near Chattanooga, or the Louisville & Nashville Railroad to Nashville, and the Nashville, Chattanooga & St. Louis Railway to Chattanooga, and from Boyce or Chattanooga by the Western & Atlantic Railroad, operated under lease from the state of Georgia by the Nashville, Chattanooga & St. Louis Railway Company, to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, shorter distance points, and Atlanta, the longer distance point, all in the state of Georgia. This route will be designated "The Chatta-

nooga-Atlanta All-Rail Route," and is shown low:

THE CHATTANOOGA-ATLANTA ALL-RAIL ROUTE.

Freight is carried from Cincinnati over this route to the various destinations on the Western & Atlantic road as through shipments under through bills of lading issued by the initial line. Through freight is delivered free to consignees in Atlanta either by carting or switching to warehouse doors; no free delivery is made at the local stations on the Western & Atlantic.

2. Rates to Atlanta on property shipped from north of Chattanooga are divided between the carriers in certain proportions, but charges to all points north of Atlanta and south of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga. In 1887, the Western & Atlantic issued a circular to its connections stating in effect that it would not accept less than its regular local charges on through business to points on its line where competition did not compel it to participate in and agree to lower through rates. This circular does not appear to have been filed with the Commission, nor were the defendants able to produce it at the hearing, but there is no reason to doubt its having been issued.

When the circular was issued this road was under another management, but the lessee now operating the road introduced evidence concerning the circular and continues to charge according to its terms.

Rates and distances over the Chattanooga-Atlanta route from Cincinnati are shown by the following table. Rates to Chattanooga and Atlanta are single rates, while those to the other points are combination rates to Chattanooga and locals therefrom.

Statement Showing Class Rates from Cincinnati to the Following Stations on the Western & Atlantic R. R.

Miles	From Cincinnati, O. To	1.	2.	3.	4.	5.	6.	A	B	C	D	E	H	F
336	Chattanooga Tenn.	76	65	57	47	40	30	30	26	23	19	34	33	38
359	Ringgold, Ga.	98	85	75	63	53	41	31	37	30½	25½	47	49	53
374	Dalton, Ga.	103	89	79	67	56	42	28	35	31	26½	48	53	54
396	Calhoun, Ga.	109	95	84	71	59	44	34	40	32	27½	53	57	56
405	Adairsville, Ga.	112	98	86	73	60	45	35	41	32½	28	54	59	57
415	Kingston, Ga.	115	101	88	75	61	46	36	42	31½	27	55	61	55
426	Cartersville, Ga.	118	103	90	76	62	47	37	43	34	29	56	62	59½
439	Acworth, Ga.	124	107	94	78	64	49	39	45	35	30	58	64	61
453	Marietta, Ga.	127	109	96	79	65	50	38	45	35	30	56	65	62
463	Vinings, Ga.	123	106	94	78	65	51	36	43	33½	29	57	63	59½
474	Atlanta, Ga.	107	92	81	68	56	46	28	35	28	24	48	53	48

The local rates and distances over the Western & Atlantic from Chattanooga and intermediate points are as follows:

Statement Showing Class Rates from Chattanooga to Local Stations on the Western & Atlantic R. R.

Miles.	From Chattanooga To	1.	2.	3.	4.	5.	6.	A	B	C	D	E	H	F.
23	Ringgold, Ga.	22	20	18	16	13	11	11	11	7½	6½	13	16	15
38	Dalton, Ga.	27	24	22	20	16	12	12	12	8	7½	16	20	16½
60	Calhoun, Ga.	33	30	27	24	19	14	14	14	9	8½	19	24	18
69	Adairsville, Ga.	36	33	29	26	20	15	15	15	9	9	20	26	19
79	Kingston, Ga.	39	36	31	28	21	16	16	16	10	9½	21	28	20
90	Cartersville, Ga.	42	38	33	29	22	17	17	17	11	10	22	29	21½
103	Acworth, Ga.	48	42	37	31	24	19	19	19	12	11	24	31	23
117	Marietta, Ga.	51	44	39	32	25	20	20	20	13	12	25	32	24
127	Vinings, Ga.	54	46	41	33	26	21	21	21	13	12	26	33	25
138	Atlanta, Ga.	57	48	43	34	27	22	22	22	12	11	27	34	24

The proportions received by the carriers of the rate from Cincinnati to Atlanta were not testified to, but the Commission is informed that the following divisions were in effect some time ago:

C. N. O. & T. P. to Chattanooga, 336 miles 76 9-10 per cent.
W. & A. to Atlanta, 138 miles 29 1-10 " "
474 100

Out of the rate of $1.07 first class, this would

give to the C. N. O. & T. P. about 76 cents, its regular rate to Chattanooga, and the W. & A. 31 cents, and it gets this proportion by either route from Cincinnati. The local rate of the Western & Atlantic, Chattanooga to Atlanta, is 57 cents per hundred pounds.

3. Other lines which reach Atlanta from Cincinnati are:

Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles; and East Tennessee, Virginia & Georgia to Atlanta, 152 miles, through distance 488 miles.

Louisville & Nashville to Nashville, 295 miles, Nashville, Chattanooga & St. Louis to Chattanooga, 151 miles; East Tennessee, Virginia & Georgia to Atlanta, 152 miles; through distance, 598 miles.

Louisville & Nashville, and Nashville, Chattanooga & St. Louis to Chattanooga, 446 miles, or Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles, and from thence the Chattanooga, Rome & Columbus (now Central of Georgia) to Kramer, 125 miles, and Georgia Pacific to Atlanta, 53 miles; through distances, respectively, 624 miles and 514 miles.

Louisville & Nashville system to Jellico, 216 miles, and East Tennessee, Virginia & Georgia to Atlanta 289 miles; through distance 505 miles.

Either the Cincinnati, New Orleans & Texas Pacific or the Louisville & Nashville is the initial carrier in each of these competing through lines, and both are defendants herein. The Louisville & Nashville owns most of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, and the latter leases from the state of Georgia and operates the Western & Atlantic Railroad. The through distance over this line is 584 miles. The Louisville & Nashville in sending traffic from Cincinnati to Atlanta prefers this route, while the Cincinnati, New Orleans & Texas Pacific favors the East Tennessee, Virginia & Georgia with which it connects at Chattanooga. The short line to Atlanta from Cincinnati is the Cincinnati, New Orleans & Texas Pacific to Boyce and the Western & Atlantic to Atlanta, distance about 474 miles, but the rate is the same by either line. The Cincinnati, New Orleans & Texas Pacific reaches Chattanooga by its own line over the shorter distance from Cincinnati and its local rate to Chattanooga is the joint rate over the longer line of the Louisville & Nashville, and Nashville, Chattanooga & St. Louis roads.

4. There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia and Baltimore, and the transportation from these Atlantic points is either all rail or water and rail by the Atlantic Coast Line, Seaboard Air-Line, Richmond & Danville, Norfolk & Western and East Tennessee and others. The water lines run to the ports of Norfolk, Portsmouth, Charleston, Savannah, Brunswick, and possibly through Port Royal and Jacksonville. From these ports Atlanta is reached by rail; the South Carolina & Georgia roads from Charleston, the Central of Georgia, the Savannah, Florida & Western and East Tennessee, from Savannah; the East Tennessee from Brunswick; the Port Royal & Augusta Railway from Port Royal, the Queen and Crescent and Louisville & Nashville run from New Orleans, and Mobile stands on similar footing.

There are also rail lines from various Mississippi and Ohio river points, which compete for Atlanta trade such as Vicksburg, Greenville, Memphis, Cairo, Paducah, Evansville and Louisville.

Freight from Cincinnati for Atlanta might reach Atlanta by a rail line over the Chesapeake & Ohio and Richmond & Danville roads, or by water and rail through Baltimore, and steam or sail craft could also be employed to the South Atlantic ports, but these routes are very circuitous, and would only be used under very exceptional conditions. Freight might go from Cincinnati to Memphis by water, and from thence by rail to Atlanta, but it was not made to appear that any appreciable amount of general freight actually does go that way in competition with the all rail route; the distance from Memphis to Atlanta by the Kansas City, Memphis & Birmingham and Georgia Pacific is about 418 miles, only 56 miles less than the through all-rail route from Cincinnati to Atlanta.

There is no competition by independent water routes to Atlanta. Traffic shipped from any Ohio or Mississippi river point, or from a North Atlantic port must pass over a line of one or more railroads in order to reach Atlanta, and such traffic is forwarded as a through shipment and taken either by all rail or by water and rail carriers under through bills of lading and at agreed through rates. The distance from Baltimore to Atlanta through the port of Charleston for the purpose of rate divisions is put at 160 constructive miles by the water way to Charleston, and about 310 miles for the rail carriage from that port to Atlanta, or about 470 miles through. The distance from Baltimore to Atlanta by the Richmond and Danville and Baltimore and Potomac roads, the direct all-rail line is 691 miles.

The rates of the eastern rail lines from New York and other seaboard cities to Cincinnati are very low, for instance, the first class rate New York to Cincinnati is 65 cents. The first class rate New York to Chattanooga is $1.14 and the all rail rate to Atlanta is $1.22.

The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like

St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. The lines controlling rates to Georgia territory are all members of the Southern Railway & Steamship Association and there is not now any actual competition between them as to rates on through business to points in that territory from one market like Cincinnati, or from different markets like Cincinnati and Baltimore or New York. These rates resulted from agreement between the several lines. The Atlanta rates were agreed upon by the lines with a view of affording to each some share of the traffic.

The Rome Railroad connects Kingston, Ga., with the East Tennessee and Central of Georgia at Rome, Ga. From Marietta the Marietta & North Georgia Railroad runs northerly 204 miles to Knoxville, Tenn., where it connects with the East Tennessee line, and also with the Knoxville, Cumberland Gap & Louisville Railroad which extends 72 miles to Middlesboro, Ky., and there meets the Louisville & Nashville system by which Cincinnati can be reached over a distance of 230 miles from Middlesboro; this gives a possible competing line from Cincinnati to Marietta of 506 miles, and to Atlanta of 527 miles. From Cartersville, Ga., the East and West Railroad of Alabama runs westerly to Rock Mart 22 miles, connecting with the East Tennessee and 16 miles farther it reaches the Central of Georgia at Cedartown. Competition has not forced rates down at Kingston, Marietta or Cartersville. No railroad other than the Western & Atlantic runs to Calhoun, Adairsville or Acworth.

6. On December 27, 1890, the Western & Atlantic Railroad was leased by the state of Georgia to the Nashville, Chattanooga & St. Louis Railway Company for 29 years at an annual rental of $420,012.00. The operation of the leased line has not been separately reported since that date. Prior to that time the road was operated under lease by the Western & Atlantic Railroad Company, at an annual rental of $300,000. The road being owned by the state no report was made of "Capital Stock" or "Cost of Road, Equipment and Permanent Improvement" by the lessee Company. From the report of this road to this Commission for the year ending June 30, 1890, the following statement is compiled:

The "Gross Earnings from Operation" were $1,562,059.76; "Operating Expenses," $1,022,668.70; "Income from Operation," $539,391.06; "Income from Other Sources," $10,615.89; "Total Income" $550,006.95. From this amount there were paid as "Deductions from Income" $312,677.24, $300,000.00 of which was the rental paid by the operating company to the state of Georgia, leaving a "net income" of $237,329.71. From this last named item there was paid $78,225.00 on income bonds for principal and coupons, so that the "Surplus from Operations of year ending June 30, 1890" was $159,104.71. This combined with the "Surplus" from the previous year made the "Surplus on June 30, 1890" $331,077.86. The "Freight Revenue" was $1,255,778.49, from which there were repayments on account of "Overcharge to shippers" $71,737.27, and "Other Repayments," $13,110.53, — Total $84,847.80, leaving "Total Freight Revenue" $1,170,930.69.

A reference to the "Comparative General Balance Sheet" shows that the company operating the road has as "Assets," $8,350.00, "Stocks" and "Bonds of other companies owned," "Cash and Current Assets," $414,611.93; "Materials and Supplies," $4,315.89. Their "Liabilities" were "Current Liabilities," $96,199.96, and "Profit and Loss" ("Surplus"), $331,077.86.

Referring to the "Freight Traffic" of the road, it appears that the "Number of tons carried of freight earning revenue" were 1,083,336; the "Number of tons carried one mile" 125,220,827, which shows the "Average distance haul of one ton" $115\frac{60}{100}$ miles. It appears that of the "Number of tons carried of freight earning revenue," 156,585 tons only originated on the road, and the balance, 926,751 tons was "Received from Connecting Roads and other Carriers." The "Average receipts per ton per mile," were .00,935 cents; "Estimated cost of carrying one ton one mile," .00,555 cents; "Freight earnings per train-mile," $1.03,052; and "Estimated cost of running a freight train one mile," .61,201 cents.

By the foregoing it appears that of the 1,083,336 tons carried that year only 156,585 tons originated on the road, the balance, 926,751 being received from connecting and other carriers; that is to say, less than 15 per cent, or but very little over one seventh of the total tonnage was local business, and some of this was doubtless carried over the whole line. The average distance haul per ton of the entire tonnage was $115\frac{60}{100}$ miles or nearly 84 per cent of the road's length of 138 miles. The bulk of the local business may be assumed to consist of shipments between Chattanooga or Atlanta and intermediate stations, and as the average distance haul per ton of the total tonnage was over 115 miles, say as far as Marietta, only 21 miles from Atlanta, going south, and Ringgold, only 23 miles from Chattanooga, going north, it may be stated as a fact that nearly all of the freight traffic received from other carriers was carried over the entire distance between Chattanooga and Atlanta, the termini of the road.

7. Rates from Cincinnati to Calhoun, Adairsville and Kingston are higher than the rates to

Atlanta on all classes except class 6. To Cartersville, Acworth and Marietta they are higher on all classes. To bring rates to these points down to the level of Atlanta rates will require the following reductions per hundred pounds.

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Calhoun cts.	2	3	3	3	3		6	5	4	3	5	4	8
Adairsville...	5	6	5	5	4		7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5		8	7	3½	3	7	8	7
Cartersville ..	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14
Vinings	16	14	13	10	9	5	8	8	5½	5	9	10	11½

Rates on classes A, B, C, D, E, H and F are also somewhat higher to Ringgold and Dalton than to Atlanta, but they are lower to these points on classes 1 to 6, inclusive. There is no evidence showing even approximately the amount of traffic carried to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, from points on other lines, but as stated in the last finding, the bulk of the traffic received from connecting and other carriers was carried over the whole length of the road, and therefore the number of tons shipped from Cincinnati and other northerly points to Calhoun and other more distant intermediate stations must have been comparatively insignificant.

The rates per ton per mile on the highest and lowest classes from Cincinnati and Chattanooga to the above named stations on the Western & Atlantic road are as follows:

Rates per Ton per Mile.

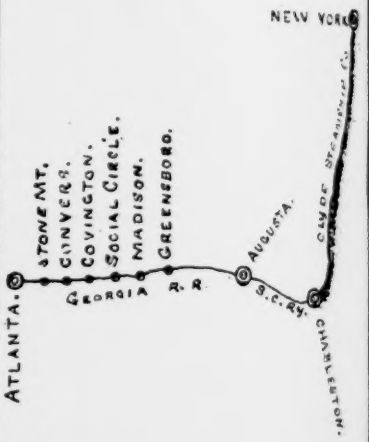
	From Cincinnati.			From Chattanooga.		
	Class 1	Class A	Mls	Class 1	Class A	Mls
Chattanooga	4.52 c.	1.19 c.	336			
Ringgold	5.46 "	1.74 "	359	19.13 c.	9.56 c.	23
Dalton	5.51 "	1.50 "	374	14.21 "	6.31 "	38
Calhoun	5.50 "	1.72 "	396	11.00 "	4.66 "	60
Adairsville	5.53 "	1.73 "	405	10.44 "	4.34 "	69
Kingston	5.54 "	1.74 "	415	9.87 "	4.05 "	79
Cartersville	5.54 "	1.74 "	426	9.33 "	3.78 "	90
Acworth	5.65 "	1.78 "	439	9.32 "	3.69 "	103
Marietta	5.61 "	1.68 "	453	8.73 "	3.42 "	117
Vinings	5.31 "	1.55 "	463	8.50 "	3.30 "	127
Atlanta	4.51 "	1.18 "	474	8.26 "	3.19 "	138

Case No. 314.

8. This route is from New York and other North Atlantic ports over the through water and rail line formed by steamships of the Clyde Steamship Company delivering at Charleston to the South Carolina Railway which connects with and delivers to the Georgia Railroad at Augusta; the points of destination being located on and along the latter line, which terminates at Atlanta. The intermediate points to which rates are complained of as being higher than for the longer distance to Atlanta are Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain.

This will hereinafter be called "The Augusta-Atlanta Part Water Route," an outline of which appears by the following diagram:

THE AUGUSTA-ATLANTA PART WATER ROUTE.



The Georgia Railroad is owned by the defendant the Georgia Railroad & Banking Company, and jointly operated under lease by the defendants, the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia.

Freight is carried over this route to the points above mentioned under through bills from the point of shipment. The facts before stated with reference to the Chattanooga-Atlanta route in regard to competing lines for Atlanta traffic, including free delivery of freights at that point, apply also to this route.

9. Rates to Augusta and Atlanta are divided between the carriers upon a proportionate basis. Rates to points intermediate between Augusta and Atlanta are combination rates made up of rates to the terminal points with locals added. Charges to these intermediate points are based as follows: Greensboro and Madison on the Augusta rate; Social Circle, classes 1 and B on Atlanta; Class 3, 4, 5, 6, A, C, D, E, H & F on Augusta; class 2 on either Augusta or Atlanta; Covington; Classes 1, 2, 3, A & B, on Atlanta the others on Augusta; Conyers, Classes 1, 2, 3, 4, A, B & H, on Atlanta; Classes 6, C, D, E and F, on Augusta, and Class 3, on either; Stone Mountain, Classes D & F on Augusta, Class C, on either, and the other Classes on Atlanta.

When rates are based on Atlanta, they consist, of the charge through the point of destination to Atlanta, plus the local back. The following table shows the rates:

From New York, Philadelphia, etc., via Charleston to Georgia Railroad Stations.

CLASSES.	1	2	3	4	5	6	A	B	C	D	E	H	F
Augusta	.96	.81	.70	58	47	37	28	42	31½	31	43	54	61
Greensboro	1.37	1.18	1.02	87	69	54	45	59	42½	41	65	83	82½
Madison	1.44	1.23	1.07	89	71	56	47	60	43	42	67	85	84
Social Circle	1.44	1.25	1.09	90	72	57	48	61	43½	42½	68	86	85
Covington	1.41	1.22	1.08	91	73	58	48	60	44	43	69	87	86
Conyers	1.38	1.19	1.05	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	1.32	1.14	1.01	85	71	58	45	57	47	44	69	80	89½
Atlanta	1.14	.98	.86	78	60	49	36	48	40	39	58	68	78

Local Rates on Georgia R. R. From Augusta.

To	MILES.	CLASSES.										
		1	2	3	4	5	6	A	B	C	D	E	F
Greensboro	83	41	37	32	29	22	17	17	17	11	10	22	21½
Madison	103	48	42	37	31	24	19	19	19	11½	11	24	23
Social C.	119	51	44	39	32	25	20	20	20	12	11½	25	24
Covington	130	54	46	41	33	26	21	21	21	12½	12	26	25
Conyers	140	57	48	43	34	27	22	22	22	13	12½	27	26½
Stone Mt.	155	62	52	46	36	29	24	24	24	14½	13	29	28½
Atlanta	171	64	54	47	37	30	25	25	25	15½	14½	30	31

The evidence does not show how rates to Atlanta are divided between the carriers over this route. The Commission has reason to believe, however, that these rates are divided upon a mileage basis, the Clyde line being allowed 250 miles for the distance to Charleston. On the basis of such mileage the divisions of the rate to Atlanta, $1.14 first class, would be about 51 cents for the Clyde line's 250 miles to Charleston; 29 cents for the South Carolina road's 137 miles to Augusta, and 34 cents for the Georgia road's 171 miles to Atlanta.

The rates per ton per mile to the Georgia Railroad Stations from Augusta on the highest and lowest class rates are as follows.

	Class 1.	Class D.
Greensboro	9.88 cents	2.41 cents
Madison	9.32 "	2.14 "
Social Circle	8.57 "	1.93 "
Covington	8.30 "	1.84 "
Conyers	8.14 "	1.78 "
Stone Mountain	8.00 "	1.68 "
Atlanta	7.49 "	1.70 "

The through first class rate, rail or water and rail, from New York to Chattanooga is $1.14, the same as the water and rail rate to Atlanta, and is in effect over all routes. The first class all rail rate to Atlanta is $1.22, water and rail $1.14; to Augusta the all rail rate is $1.04 and by water and rail it is 96 cents. But the first class rate to Augusta or Atlanta from Cincinnati is $1.07, while to Chattanooga it is 76 cents. From Baltimore to Augusta the all rail charge is 97 cents, while the water and rail rate is 89 cents; to Atlanta the water and rail rate is $1.07 and by all rail it is $1.15. Rates on the other classes are similarly adjusted. A full statement of through rates to various important basing points from New York, Baltimore and Cincinnati is hereinafter set forth.

10. Of the intermediate points mentioned, namely Greensboro, Madison, Social Circle, Conyers, Covington and Stone Mountain, only two, Madison and Social Circle, are junction points. At Madison the Georgia Railroad connects with the branch of the Richmond & Danville running between Macon and Lula on the Atlanta & Charlotte Division of the main line. The distance from Lulu to Madison is 72 miles; the distance from Lula to Atlanta by the Richmond & Danville is 66 miles; practically the same distance. At Social Circle the Georgia Railroad connects with the Gainesville, Jefferson & Southern Railroad which extends from Social Circle to Gainesville, a distance of 52 miles, where it connects with the Atlanta & Charlotte division of the Richmond & Danville line. The distance from Atlanta to Gainesville by the Richmond & Danville is 53 miles, about the same as from Social Circle to Gainesville. The first class water and rail rate from New York to Madison or Social Circle is $1.44 as against $1.14 to Atlanta. The fact that different lines run to these two points has not compelled reductions in rates thereto, but it was stated in evidence that the fact of direct railroad connection between Madison and Macon would soon be likely to cause a lowering of rates to Madison, the short water and rail route from New York being through Brunswick and Macon.

11. The following is taken from the report of the Georgia Railroad Company to the Commission for the year ending June 30, 1891. The report states in regard to "Capital Stock" as follows: "The franchise owned by the lessee organization is not capitalized. Said franchise is a lease of the Georgia R. R. and branches (not including Banking Department) for a period of 99 years from and after April 1, 1881, at a rental of $600,000.00 per annum payable by the lessee organization, $300,000.00 on April 1, and $300,000.00 on October 1, in each year." It has no "Funded Debt." Its "Current Liabilities" are $835,223.35 which includes $600,976.47 which is designated as "Ownership Debt," and is explained by a foot-note. "The owners of the lease have advanced to the lessee organization." The "Cost of Road, Equipment, and Permanent Improvements" is reported by the lessor organization. However, the lessee expended during the year in improvements which it included in "Operating Expenses," $185,399.79. The "Gross Earnings from Operation" were $1,905,159.94.

"Operating Expenses" $1,236,796.65. "Income from Operation" $668,363.29. "Income from other Sources" $60,618.00. "Total Income" $728,981.29. From this "Total Income" there was paid as "Deductions from Income" $610,302.42 of which $600,000.00 was on account of rental paid for the use of the road. This leaves the "Net Income" $118,678.87, which was carried to "Surplus from Operations of Year ending June 30, 1891." On June 30, 1890, there was a "Deficit" of $484,479.47 which would leave the "Deficit on June 30, 1891," $365,800.60. The "Freight Revenue" was $1,291,732.69, from which there were repayments on account of "Overcharge to Shippers" and "Other Repayments" of $16,751.20, which leaves the "Total Freight Revenue" $1,274,981.49. The road also received other freight earnings on account of "Stock Yards," "Elevators," and "Other Items," $538.90, making its "Total Freight Earnings" $1,275,520.39.

The total "Assets" shown in the "Comparative General Balance Sheet," including the "Cash and Current Assets," "Materials and Supplies," and "Profit and Loss" (deficit), were $963,150.70. The "Liabilities," in addition to the "Current Liabilities" heretofore referred to, were "Agents' Deposits" $20,900.00, and "Annual Inventory" $107,027.35.

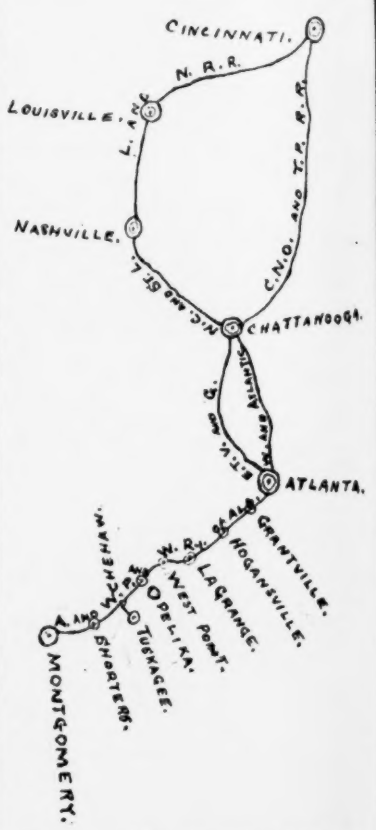
Referring to the "Freight Traffic" of this road, it appears that the "Number of tons carried of freight earning revenue" was 669,784. The "Number of tons carried one mile" was 90,370,108, which indicates that the "Average distance haul of one ton" was 135 miles. The "Average receipts per ton per mile" were .01,411 cents; the "Estimated cost of carrying one ton per mile" was .00,935 cents. Of the "Number of Tons carried of freight earning revenue," it appears that 180,730 tons originated on this road and 489,054 tons were "Received from Connecting Roads and other Carriers."

Case No. 325.

12. In this case the transportation involved is from Cincinnati and other Ohio river points over the Cincinnati, New Orleans & Texas Pacific to Chattanooga, or else to the same point on the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads, and from Chattanooga to Atlanta by either the East Tennessee or the Western & Atlantic; from Atlanta the traffic goes to the several destinations on the lines of the Atlanta & West Point and Western Railway of Alabama, to wit, Grantville, Hogansville, La Grange, West Point and Shorters, shorter distance points to which rates are complained of and Opelika and Montgomery, the longer distance points, Opelika being nearer, however, than Shorters to Atlanta.

This route will be called the Atlanta & West Point All-Rail Route, and is shown below:

THE ATLANTA & WEST POINT ALL-RAIL ROUTE.



Traffic is carried under through bills to the several destinations, but the Nashville, Chattanooga & St. Louis does not participate in traffic to points between Montgomery and West Point except on consignments from points on the Ohio river below Henderson, and such consignments probably go *via* the Louisville & Nashville from Nashville and through Montgomery instead of Atlanta; but freight from any other Ohio river point for stations on the Atlanta & West Point, including West Point, may go over its line through Chattanooga and be forwarded *via* Atlanta. Therefore traffic from points below Henderson to points on the Western Railway of Alabama, except West Point, going over the N. C. & St. L. does not pass through the intermediate points above named, and such points are longer instead of shorter distance points as to traffic so shipped and routed.

The Louisville & Nashville operates its own lines from Cincinnati, Louisville, Owensboro, Evansville, Henderson and other points on the Ohio river through Nashville, Decatur, and Birmingham to Montgomery, and freights from those points consigned over its road for Montgomery and points on the Western Railway of Alabama, are carried over this line instead of the route through Chattanooga and Atlanta mentioned in the complaint, but it does send traffic by the route complained of to Atlanta & West Point stations east of West Point. West Point freight goes over the Montgomery route unless directed to be forwarded *via* Atlanta. The distance from Cincinnati to Montgomery by the Louisville & Nashville is 600 miles; by the Atlanta & West Point route it is 649 miles; but the shortest distance to Montgomery from Cincinnati is by the Cincinnati, New Orleans & Texas Pacific to Birmingham, 478 miles, and the Louisville & Nashville from that point to Montgomery 96 miles; total 574 miles. Montgomery can therefore be reached from Cincinnati and other Ohio river points over shorter routes than the one involved in this controversy.

The Louisville & Nashville connects at Birmingham with the Columbus & Western Railroad, operated by the Central of Georgia, and extending from that point to Opelika and Columbus. The distance from Cincinnati to Birmingham by the Louisville & Nashville is 504 miles, and from Birmingham to Opelika by the Columbus & Western, it is 128 miles, a total of 632 miles. The distance from Cincinnati to Opelika by the Atlanta route is 583 miles; by the Louisville & Nashville to Montgomery and Western of Alabama, it is 666 miles; and by the Cincinnati, New Orleans & Texas Pacific through Montgomery it is 640 miles. The Cincinnati, New Orleans & Texas Pacific is the short line to Birmingham from Cincinnati, being 478 miles, and in connection with the Columbus & Western Opelika is 606 miles from Cincinnati by this route. The distance from Montgomery to Shorters, one of the shorter distance points mentioned in the complaint, is 23 miles, and the mileage from Cincinnati to Shorters *via* Montgomery is only 597 miles, while *via* Atlanta it is 626 miles. The evidence does not show how the Cincinnati, New Orleans & Texas Pacific routes its traffic to stations on the Western Railway of Alabama between Montgomery and West Point. The shortest distance from Cincinnati to West Point is by the Atlanta route, 561 miles, and the bulk of freight for that point may go that way when shipped over the Cincinnati, New Orleans & Texas Pacific.

13. Montgomery is situate upon the Alabama river which empties into Mobile Bay. There is possible direct water communication between points on the Ohio river and Montgomery, and some water competition on freight from Western and Ohio river points has existed for six or seven years. The all water competition was not shown to be active under railroad rates now in effect. The Mobile & Ohio Railroad carries freight from St. Louis to Mobile at the prevailing low rate, and this can come up the river to Montgomery.

Two lines of steamers run up the Alabama river from Mobile. There is water transportation of freights from eastern points to Mobile also, one line being the New York & Mobile Steamship Company. No water route extends to Opelika, but the Apalachicola and Chattahoochee rivers are navigable from Apalachicola up to Columbus except during a portion of the summer. It was not shown, however, that this route is much used except for lumber ships, or that it can be extensively employed by all vessels until the channel is materially improved. Columbus is 29 miles from Opelika, and connected therewith by the Columbus & Western road, operated by the Central of Georgia. There is competition by eastern cities, as Baltimore, Philadelphia, New York and Boston over all rail and water and rail lines through South Atlantic ports for the sale of traffic in Montgomery, Opelika, and all points in Georgia and Alabama territory.

14. Rates to West Point, Opelika and Montgomery are divided between the carriers upon an agreed basis, but those in effect to Grantville, Hogansville, La Grange and Shorters are found by the addition of locals and rates to Atlanta, Montgomery or Opelika, whichever gives the lowest combination. Opelika rates are adjusted with reference to Montgomery rates, and West Point rates are based upon either Montgomery or Opelika, whichever gives the lowest rates, but West Point rates are the subject of agreement between the lines.

The following table shows rates from Cincinnati, O., to stations on the Atlanta & West Point and Western Railway of Alabama:

Rates from Cincinnati, O., to Stations on Atlanta & West Point Railroad and Western Railway of Alabama.

Cincinnati, O., to Atlanta & West Point R. R.	Classes.													Per bbl.
	Miles	1	2	3	4	5	6	A	B	C	D	E	H	F
Atlanta,	474	1.07	.92	.81	.68	.57	.46	.28	.35	.28	.24	.48	.53	.48
Grantville,	525	1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.37	.32	.68	.77	.65½
Hogansville,	532	1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.37	.32½	.69	.79½	.66
La Grange,	545	1.46½	1.28½	1.13	.96½	.78	.62½	.44½	.51½	.37½	.33	.70	.81½	.67
West Point,	561	1.35	1.18	1.05	.88	.73	.59	.41	.50	.38	.33½	.68	.65	.68

Western Ry. of Alabama.														
Opelika,	583	1.17	1.02	.91	.76	.63	.52	.32	.38	.31	.27	.54	.58	.54
Shorters,	626	1.36	1.28	1.12	.91	.76	.60	.45	.48	.39	.32	.70	.57	.72
Montgomery,	649	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44

(See analysis of mileage to Shorters and Opelika above set forth).

Rates as above taken from Louisville and Nashville, S. E., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E., January 12, 1892.

How the Rates are Made.

	Miles from Atlanta.	Classes.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
Grantville, local	51	.33	.29½	.27½	.24	.20	.14½	.14½	.14½	.9	.8	.20	.24	.17½
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
Grantville, through		1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.37	.32	.68	.77	.65½
Hogansville, loc.	58	.36½	.33	.29½	.26½	.21	.15½	.15½	.15½	.9	.8½	.21	.26½	.18
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
Hogansville, thro'		1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.37	.32½	.69	.79½	.66
La Grange, local	71	.39½	.36½	.32	.28½	.22	.16½	.16½	.16½	.9½	.9	.22	.28½	.19
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
La Grange, through		1.46½	1.28	1.13	.96½	.78	.62½	.44½	.51½	.37½	.33	.70	.81½	.67
West Point, thro'	87	1.35	1.18	1.05	.88	.73	.59	.41	.50	.38	.33½	.68	.65	.68
Opelika, through	109	1.17	1.02	.91	.76	.63	.52	.32	.38	.31	.27	.54	.58	.54
Shorters, local	152	.28	.26	.24	.20	.17	.13	.13	.15	.13	.10	.18	.20	.28
Montgomery thro'	175	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44
Shorters, through		1.36	1.28	1.12	.91	.76	.60	.45	.48	.39	.32	.70	.57	.72
Montgomery, thro'	175	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44

Rates as above taken from Louisville & Nashville, S. D., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E. effective January 1st, 1892.

The following statement shows the rate per ton per mile on the highest and lowest classes, according to the shortest mileage over any route from Cincinnati.

To	Miles	Class 1. cts.	Class D. cts.
Atlanta	474	4.51	1.01
Grantville	525	5.33	1.22
Hogansville	532	5.39	1.22
La Grange	545	5.38	1.21
West Point	561	4.81	1.19
Opelika	583	4.01	0.93
Shorters	597	4.55	1.07
Montgomery	574	3.76	0.76

Following is a statement showing the rate per ton per mile to local stations from points on which rates to these local stations are based:

Rate per Ton per Mile of Local Rates.

From Atlanta, To	Class 1.	Class D.
Grantville	12.94 cents	3.14 cents
Hogansville	12.58 "	2.93 "
La Grange	11.12 "	2.53 "
From Montgomery to Shorters,	24.35 "	8.70 "

15. The Atlanta & West Point and Western Railway of Alabama are corporations independent of each other, but for purposes of economy the roads are operated under one set of officers and the same crews, cars and engines run over both lines. The following financial statements are made up from reports to the Commission of these companies for the year ending June 30, 1891:

Atlanta & West Point Railroad Company:—The "Capital Stock" of this road was $1,232,200.00. "Funded Debt" $1,232,200.00; "Current Liabilities" $95,067.78; "Cost of Road, Equipment, and Permanent Improvements" $2,464,400.00. The "Gross Earnings from Operation" were $483,053.50; "Operating Expenses" $343,689.45; "Income from Operation" $139,364.05. There was paid from this as "Deductions from Income" $86,878.32, leaving "Net Income" $52,485.73. There was also paid a dividend of 6 per cent on Common Stock of $73,932.00, leaving the "Deficit from Operations of Year ending June 30, 1891,"

$21,446.27. There was a "Surplus on June 30, 1890," of $124,359.28, which would make the "Surplus on June 30, 1891," $102,913.01. The "Freight Revenue" was $274,651.80, from which there was repaid as "Overcharge to Shippers" $7,100.83, which leaves the "Total Freight Revenue" $267,550.97. In addition to the "Cost of Road" heretofore referred to, the road returns in its "Comparative General Balance Sheet" as "Assets," "Cash and Current Assets" $180,337.85; "Materials and Supplies" $17,642.94. Its only "Liabilities" in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities" hereinbefore referred to, are the "Profit and Loss" (surplus), $102,913.01. The "Grand Total" of the Balance Sheet is $2,662,380.79.

Referring to the "Freight Traffic," it appears that the "Number of tons carried of freight earning revenue" was 196,300. The "Number of tons carried one mile" was 13,761,055, which indicates that the "Average distance haul of one ton" was 70 miles. The "Average receipts per ton per mile" were .01,944 cents; the "Estimated cost of carrying one ton per one mile," .01,245 cents. Of the "Number of tons carried of freight earning revenue" 109,716 tons originated on this road and 86,584 tons were "Received from Connecting Roads and other Carriers."

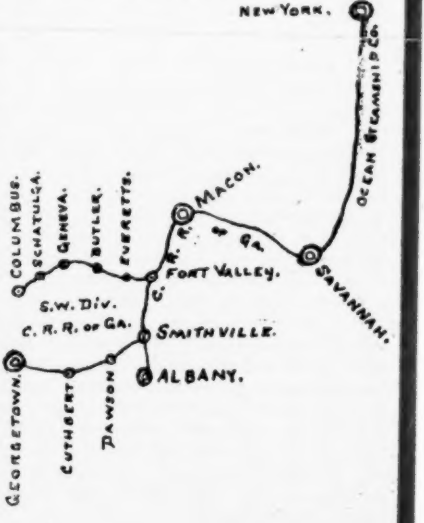
Western Railway Company of Alabama: The "Capital Stock" of this road is $3,000,000.00; "Funded Debt" $1,543,000.00; "Current Liabilities" $168,771.38. The "Cost of Road, Equipment and Permanent Improvements" is $4,543,000.00. The "Gross Earnings from Operation" were $572,220.49; "Operating Expenses" $400,911.19, which leaves an "Income from Operation" of $171,309.30. The "Income from Other Sources" was $6,460.46, making the "Total Income" $177,769.76. From this there was paid as "Deductions from Income" $137,617.31, leaving the "Net Income" $40,152.45, which was carried to "Surplus from Operations of Year ending June 30, 1891." The "Surplus on June 30, 1890," was $47,990.40, which would make the "Surplus on June 30, 1891," $88,142.85. The "Freight Revenue" was $340,802.21, from which there were repayments on account of "Overcharge to Shippers" of $5,499.29, leaving the "Total Freight Revenue" $335,302.92.

Reference to the "Comparative General Balance Sheet," discloses that in addition to the "Cost of Road" heretofore referred to, the road has "Assets" of "Cash and Current Assets" $204,792.87; "Materials and Supplies" $52,121.36, making the "Grand Total" of the "General Balance Sheet" $4,799,914.23. Its "Liabilities," in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities," were the "Profit and Loss" (surplus), $88,142.85. Reference to the "Freight Traffic" shows that the "Number of tons carried of freight earnings revenue" was 320,428. The "Number of tons carried one mile" was 20,323,159, which shows that the "Average distance haul of one ton" was 63 miles. The "Average receipts per ton per mile" were .01,650 cents, and the "Estimated cost of carrying one ton one mile" was .01,061 cents. Of the "Number of tons carried of freight earning revenue," 148,474 tons originated on this road, and 171,954 tons were "Received from Connecting Roads and other Carriers."

Case No. 315.

16. This was the next case heard, and the route is a water and rail line from New York and other North Atlantic ports by steamships of the Ocean Steamship Company to Savannah, which delivers to the Central Railroad of Georgia for carriage to points on its Southwestern Division beginning at Macon. The points involved are situate on two terminating roads both in the same division of the Central of Georgia system. These points are, 1, Everett's, Butler, Geneva and Schatulga, shorter distance points, and Columbus, the longer distance point, 2, Smithville, Dawson and Cuthbert, shorter distance points, and Georgetown, the longer distance point. These terminal roads will hereinafter be called the Columbus Branch and the Georgetown Branch, respectively. A drawing of this route is here given under the title of:

THE MACON-COLUMBUS-GEORGETOWN PART WATER ROUTE.



The Central Railroad of Georgia has close traffic relations with the Ocean Steamship line. Traffic over this route is carried under through bills to the several destinations.

17. Rates to the shorter and longer distance points are straight rates and are not based on a combination of rates to and from basing points. The highest first class rate to any point is $1.31 and the lowest is $1.14, except to Macon, $1.09, and Albany, which takes the Macon rate. Macon is a shorter distance from New York than any of the stations on this division, and Albany is not "on the same line" with the shorter and longer distance points directly involved in this case. The table shown below sets forth the rates to various points on this division, but as above stated rates are complained of only to Everett's, Butler, Geneva and Schatulga on the Columbus Branch, and Smithville, Dawson and Cuthbert on the Georgetown Branch.

Statement showing Class Rates from New York, N. Y., Philadelphia, Pa., etc., to the following stations on the Southwestern Division of the Central Railroad of Georgia, January 20, 1892.

Distance from Macon, Ga., To	Miles.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per Bbl. F.
Everett's	36	.131	.111	.98	.82	.67	.56	.46	.52	.40	.37	.67	.78	.75½
Butler,	50	.131	.111	.98	.83	.69	.56	.46	.53	.41	.38	.67	.78	.78
Geneva,	70	.131	.111	.98	.83	.69	.56	.46	.54	.42	.39	.67	.78	.80
Schatulga,	91	.131	.111	.98	.83	.69	.56	.46	.55	.43	.40	.67	.78	.82
Columbus,	100	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78
To Macon		.109	. 96	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.68
Fort Valley,	29	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½
Marsh'v.	37	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½
Montezuma,	49	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.38	.58	.68	.78
Americus,	71	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78
Leesburgh,	96	.131	.111	.98	.83	.69	.56	.46	.55	.41	.40	.67	.78	.81
Albany,	107	.109	. 96	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.68
Smithville,	83	.131	.111	.98	.83	.69	.56	.46	.55	.41	.39	.67	.78	.80
Dawson,	98	.131	.111	.98	.83	.69	.56	.46	.55	.42	.40	.67	.78	.81
Cuthbert,	118	.131	.111	.98	.83	.69	.56	.46	.56	.42	.39	.67	.78	.82
Georgetown,	141	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78

At Columbus the following lines center: The Central of Georgia, Southwestern Division, and The Columbus & Western Division, which runs to Birmingham; Georgia Midland & Gulf to McDonough, Columbus Southern to Albany, Columbus & Rome to Greenville, and Mobile and Girard to Searight, the two latter being also a part of the Central of Georgia system. Georgetown is the first station east and two miles from Eufaula, the terminus of the Georgetown branch, and takes Eufaula rates. The Montgomery & Eufaula division of the Central of Georgia extends from Eufaula to Montgomery. Everett's, Butler and Schatulga have no railroad communication except the Central of Georgia. Smithville is the junction of the Albany and Eufaula, or Georgetown, branches. Dawson has connection between the Central of Georgia and Columbus Southern. Cuthbert is the junction of the Georgetown road with a branch for Fort Gaines.

19. There is possible competition to Columbus and Eufaula from New York by steamship to Jacksonville, rail to the Chattahoochee river, and steamer up that river to Eufaula and Columbus, or by water all the way if a line were established, but under present rates and navigable conditions the river route is not a dangerous competitor. The various lines all-rail and water and rail, which penetrate this territory are competitors for the carrying trade, but the Central system controls the rates to Eufaula and Columbus, in a large degree, except by the river.

20. For the year ending June 30, 1890 The "Average receipts per ton per mile" of the Central of Georgia Railroad System was .01,902 cents, and the "Estimated cost of carrying one ton one mile" a was .01,428 cents, .00,474 cents, nearly half a cent less than the rate received Its "Net Income" was $1,026,597.66, from which was paid an 8 per cent dividend on $7,500,000, the entire "Capital Stock," amounting to $600,000 and the balance $426,597.66 was carried to the "surplus" account, which on June 30, 1890, was $950,113.22. The "Number of tons carried of freight earning revenue" was 1,705,683, of which 944,521 tons originated on the road, and 761,162 tons were "Received from Connecting Roads and other Carriers." This report is based on an operated mileage of 1,317.46 miles. The report was made by the "Central Rail Road and Banking Company of Georgia."

Case No. 316.

21. This is an all rail route from Cincinnati and Ohio river points over the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, the East Tennessee, Virginia & Georgia to Atlanta and the Atlanta Division of the Central Railroad of Georgia to the points of consignment mentioned in the complaint as

Jonesboro, Hampton, Griffin, Barnesville and Forsyth, intermediate stations, and Macon the terminus, to which, though a longer distance, lower rates are charged than to the shorter distance points mentioned. This route is here termed the Atlanta-Macon All Rail Route, and is as follows:

ATLANTA-MACON ALL RAIL ROUTE.

Traffic goes over this route under through bills of lading to the various destinations named above. By this line Atlanta is 488 miles from Cincinnati and 103 miles from Macon, making the distance to Macon from Cincinnati 591 miles. There is no water route to Macon, but the same strong competition exists between carriers and markets for the Macon as for the Atlanta trade.

22. The same rates are in effect to both Atlanta and Macon from Cincinnati, except on classes B, C, D, E, H and F, which are two cents higher to Macon. Some of the rates to intermediate points are based on rates to Atlanta or Macon, plus the locals therefrom, especially rates on the higher classes, the others are straight rates. A table of these rates with distances from Cincinnati is here given:

Rates taken from Cincinnati, New Orleans & Texas Pacific R. R. Supplement No. 2. Through Tariff No. 15, effective August 24, 1891, and through Freight Tariff No. 15 effective April 16, 1891.

The rates per ton per mile on the highest and lowest classes are as follows:

To	Class 1.	Class D.
Atlanta	4.38 Cents	.98 Cents
Jonesboro	5.07 "	1.18 "
Hampton	5.12 "	1.19 "
Griffin	5.23 "	1.20 "
Barnesville	5.07 "	1.18 "
Forsyth	4.64 "	1.13 "
Macon	3.62 "	0.98 "

23. Jonesboro, Hampton and Forsyth have no other railroad service than that afforded by the Central of Georgia roads. Griffin has railroad connection with the Georgia Midland and Gulf, and is also the junction of the Atlanta and Chattanooga divisions of the Central of Georgia. The distance to Griffin from Cincinnati over the C. N. O. & T. P. to Chattanooga and the Central of Georgia from Chattanooga is 534 miles, only 3 miles greater than by the way of Atlanta. Barnesville is the junction of the Atlanta Division and the Upson County Branch, a 16 mile road to Thomastown. On freights from New York, Philadelphia & Boston, Griffin enjoys the Atlanta water and rail rate of $1.14 first class, and also the Atlanta water and rail rate from Baltimore of $1.07, but from Cincinnati its first class rate is as above stated $1.39. Macon has a rate of $1.09 from New York, and $1.02 from Baltimore.

Case No. 326.

24. This case was heard last of all, but as the remaining case refers only to one commodity, while this, like the others, extends to all classes of freights, the facts pertaining to it will be stated now. The route here is water and rail from New York and other North Atlantic ports *via* the Clyde Steamship line to Charleston, the South Carolina Railway to Augusta, the Georgia Railroad to Atlanta, and the Atlanta & West Point and Western Railway of Alabama to the destinations mentioned in the complaint, which are Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance stations and Opelika the longer distance point. This route is distinguished by the name:

From Cincinnati, O.,	Miles		Classses, rates in cents per 100 pounds. 1	2	3	4	5	6	A	B	C	D	Per bbl. E	H	F
To Atlanta	488	Ga.	107	92	81	68	56	46	28	35	28	24	48	53	48
Jonesboro	509	"	129	112	99	83	69	57	39	46	35	30	61	68	61½
Hampton	520	"	133	115	102	87	71	58	40	47	35½	31	63	72	63
Griffin	531	"	139	121	107	87	72	57	42	49	36½	32	66	73	65½
Barnesville	548	"	139	121	107	91	75	60	42	50	37	32½	69	78	66
Forsyth	564	"	131	114	101	86	70	58	40	48	36½	32	65	73	65
Macon	591	"	107	92	81	68	56	46	28	38	33	29	50	55	58

"THE ATLANTA & WEST POINT PART WATER ROUTE."

25. The rates are as follows:

From New York, N. Y. Philadelphia, Pa.		Classes, Rates in cents per 100 lbs.											Per bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
To Atlanta West Point R. R.														
Atlanta	Ga.	114	98	86	73	60	49	36	48	40	39	58	68	78
Newnan	"	131	111	98	83	69	56						78	
Grantville	"	147	128	114	97	80	64						94	
Hogansville	"	151	131	116	100	81	65						97	
La Grange	"	154	135	118	102	82	66						99	
West Point	"	142	124	110	93	77	62						88	
Western R. R. of Alabama.														
Opelika, Ala.		114	98	86	73	60	49	36	48	40	39	58	68	78

Rates taken from Tariff issued by R. D. Carpenter, Commissioner of Associated Railways of Virginia and the Carolinas for March, 1892 (How to Ship).

Rates by the way of the Ocean Steamship line to Savannah and the Central of Georgia and connections are substantially the same.

Except Newnan, the stations in this case were considered in the findings under Case 325, relating to traffic from Cincinnati over the Atlanta & West Point all rail route.

26. The distance by the Central of Georgia from Savannah to Atlanta is 295 miles, 13 miles less than the distance from Charleston to Atlanta. The distance from Savannah to Augusta by the Central of Georgia is 132 miles, 5 miles less than the mileage from Charleston to Augusta by the South Carolina road. The distance from Savannah to Opelika by the Central of Georgia through Macon and Columbus is 321 miles, 26 miles less than the distance to Newnan, the first shorter distance point, over the route from Charleston, and only 13 miles greater than the distance from Charleston to Atlanta. The Central of Georgia route Savannah to Opelika is with the exception of the 36 miles from Columbus, wholly in the state of Georgia. Freights can be shipped by the Central of Georgia from Savannah through Opelika to West Point and La Grange, and carried over a less distance than by the route from Charleston or the routes from Savannah through Augusta or Atlanta. It is only 6 miles farther to Hogansville *via* Savannah and Opelika than from Charleston; only 20 miles greater distance to Grantville, and but 44 miles farther to Newnan. There is a still shorter route from Savannah to Opelika, namely the Central of Georgia to Lyons, 75 miles, the Savannah, Americus & Montgomery, called the "Sam" road, to Americus, 124 miles, and the Central system to Opelika, 93 miles, or 292 miles in all. It is a less distance by this route from Savannah through Opelika to all the shorter distance stations named in the complaint, except Newnan, than from Charleston.

From the port of Brunswick, Ga., Opelika can be reached by the Savannah, Florida & Western to Albany, 169 miles, and the Central of Georgia to Opelika, 124 miles, or a distance of 298 miles through. It is nearer from Brunswick *via* Opelika to all the shorter distance points in this case, except Newnan, than to these points from Charleston *via* Atlanta, and it is only 21 miles farther to Newnan from Brunswick than from Charleston.

But Savannah traffic can also reach Newnan by the Central of Georgia to Griffin and its Chattanooga division over a short distance of 288 miles, 7 miles less than the distance from Savannah to Atlanta and 20 miles less than from Charleston to Atlanta. Newnan is 39 miles from Atlanta, and therefore the mileage from Charleston to Newnan is 347 miles as against only 288 miles from Savannah.

Case No. 324.

27. This case relates to rates on fertilizers from Charleston to points on the Atlanta & West Point and Western Railway of Alabama. The route from Charleston is all rail and the same as the rail portion of the route in Case No. 326. The destinations are also the same. This route, denominated The Atlanta & West Point Fertilizer Route, is set out in the diagram below:

"THE ATLANTA & WEST POINT FERTILIZER ROUTE."

Traffic is shipped under through bills to the various points.

28. The rates and distances from Charleston are as follows:

Rates on Fertilizers from Charleston.

To	Distance	Rate per ton Dollars.	Rate per ton per mile Cts.
Atlanta	308	3.14	1.02
Newnan	347	3.25	0.93
Grantville	359	3.72	1.04
Hogansville	366	3.82	1.04
La Grange	379	3.89	1.03
West Point	395	3.70	0.94
Opelika	417	3.00	0.72
Montgomery	483	3.00	0.62

These rates are the same as those in effect from Savannah to the same points over a route to the shorter distance points mentioned which may be wholly within the state of Georgia, and the rates from Savannah are subject to approval by the Georgia Railroad Commission, the complainant in this case.

The fertilizer rate to Newnan where competition in carrying exists by the Central of Georgia is only 11 cents more than the Atlanta rate, while to Grantville only 12 miles farther from Atlanta it is 58 cents above Atlanta and 47 cents higher than the rate to Newnan.

29. Fertilizers are low grade freight and much of it comes by water to South Atlantic ports. The rail rate per ton on fertilizers to all stations beyond Atlanta on the Atlanta & West Point road, including West Point, is the same from Richmond, West Point, Norfolk, Portsmouth or Pinners Point, namely, $4.35 per ton, and it is $3.89 from Wilmington, the same as the rate from Charleston to La Grange and West Point. The rate to Opelika from Wilmington is $3.89 and from the other ports it is $4.25 per ton.

31. The following statements show rates by all-rail and rail and water routes from New York, Baltimore and Cincinnati to the more important basing points in the territory under consideration.

Statement showing Freight Rates on Classified Traffic from New York, Baltimore and Cincinnati to various Southern points named, in effect at the present time.

Distances.	From	To	Route.	Rates in cents per hundred pounds. 1	2	3	4	5	6	A	B	C	D	E	H	per bbl. F
8	New York	Chattanooga	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
804	New York	Chattanooga	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Atlanta	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
857	New York	Atlanta	All Rail	122	104	91	77	63	51	38	50	42	41	61	72	82
"	New York	Augusta	Rail and Water.	96	81	70	58	47	37	28	42	31½	31	43	54	61
802	New York	Augusta	All Rail	104	87	75	62	50	39	30	44	33¼	33	46	58	65
"	Baltimore	Atlanta	Rail and Water.	107	92	81	68	56	46	34	45	37	36	55	65	72
906	Baltimore	Atlanta	All Rail	115	98	86	72	59	48	36	47	39	38	58	69	76
474	Cincinnati	Atlanta		107	92	81	68	56	46	28	35	28	24	48	53	48
"	Baltimore	Chattanooga	Rail and Water.	106	90	83	70	57	46	33	45	37	36	55	65	72
659	Baltimore	Chattanooga	All Rail	106	90	83	70	57	46	33	45	37	36	55	65	72
336	Cincinnati	Chattanooga		76	65	57	47	40	30	20	26	23	19	34	33	38
"	Baltimore	Augusta	Rail and Water.	89	75	65	53	43	34	26	39	28¼	28	40	51	58
613	Baltimore	Augusta	All Rail	97	81	70	57	46	36	28	41	30¼	30	43	55	50
645	Cincinnati	Augusta		107	92	81	68	56	46	28	37	30	26	50	55	52
"	New York	Macon	Rail and Water.	109	96	83	70	59	48	34	47	35	34	52	60	68
927	New York	Macon	All Rail	117	102	88	74	62	50	36	49	37	36	55	64	72
"	New York	Birmingham	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
991	New York	Birmingham	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Montgomery	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
1052	New York	Montgomery	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Opelika	Rail and Water	114	98	86	73	60	49	36	48	40	39	58	68	78
986	New York	Opelika	All Rail	122	104	91	77	63	51	38	50	42	41	61	72	82

Statement showing Freight rates on Classified Traffic from New York, Philadelphia and Baltimore to South Atlantic points named, in effect at present time.

FROM	TO	VIA ALL-RAIL ROUTES. CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
New York and Philadelphia	Charleston	78	64	53	38	31	26½	26½	26½	26½	26½	35	36½	6½
Baltimore	Charleston	78	64	53	38	31	22	22	22	22	22	35	32	4
New York and Philadelphia	Savannah	78	64	53	38	31	26½	26½	26½	26½	26½	35	36½	6½
Baltimore	Savannah	78	64	53	38	31	22	22	22	22	22	35	32	4
New York, Philadelphia and Baltimore	Brunswick	81	67	60	54	48	32	32	32	32	32	43	34	6
New York, Philadelphia and Baltimore	Jacksonville	106	90	76	57	47	39	38	38	38	37½	47	46	7½

Statement showing Freight Rates on Classified Traffic from New York, Philadelphia and Baltimore to the South Atlantic points named, in effect at present time.

FROM	TO	VIA RAIL AND WATER ROUTES. CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
New York and Philadelphia	Charleston	70	58	48	34	28	24½	23½	23½	23½	23	32	30	6
Baltimore	Charleston	60	50	45	34	26	18	17	17	17	17	30	26	3
New York and Philadelphia	Savannah	70	58	48	34	28	24½	23½	23½	23½	23	32	30	6
Baltimore	Savannah	70	58	48	34	28	20	20	20	20	20	32	28	4
New York and Philadelphia	Brunswick	73	61	55	50	45	30	30	30	30	30	40	30	6
Baltimore	Brunswick	73	61	48	34	27	20	18½	18½	18½	18	32	32	3
New York and Philadelphia	Jacksonville	73	61	48	34	28	24½	23½	23½	23½	23	32	32	6
Baltimore	Jacksonville	73	61	48	34	28	23½	22½	22½	22½	22	32	32	6

Statement showing Freight Rates on Classified Traffic from Cincinnati, O., to the South Atlantic points named, in effect at present time.

FROM	TO	CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati, O.	Charleston Savannah Brunswick Jacksonville	95	80	75	70	58	46	35	35	27	23	40	40	8

Statement showing present Freight Rates via Trunk Line Routes on Classified Traffic to Cincinnati, Ohio, from the Eastern cities named.

FROM	TO	CLASSES. In Cents Per 100 Lbs.					
		1	2	3	4	5	6
New York or Boston	Cincinnati	65	57	44	30	26	22
Philadelphia	Cincinnati	59	51	42	28	24	20
Baltimore	Cincinnati	57	49	41	27	23	19

32. The complainant, the Georgia Railroad Commission, under authority conferred by the Legislature of the state of Georgia, has jurisdiction of railroad transportation wholly within the borders of that state, but that Commission has no control over passengers or property transported wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement for a continuous carriage or shipment, between points in different states or territories of the United States. The defendants in these several cases arrange for the through carriage of property from Ohio river points, or North Atlantic ports, as the case may be, to the destinations named in the complaint. The initial line accepts traffic for through carriage and issues through bills at rates of charge for the whole distance. The carriers concerned receive the property and transport

it on to the point of destination where it is delivered to the consignee who pays to the terminal carrier the total expense of transportation, unless it has been prepaid by the shipper, and the money so collected is paid by the carrier receiving it, after deducting its own share, to the other carriers composing the through line according to the proportion which, by previous understanding or arrangement, each is entitled to receive. The initial carrier of each route is fully acquainted with the terms which each of the other carriers exacts for receiving, forwarding and delivering traffic.

The Western & Atlantic, and others, it may be assumed, have soliciting agents at Cincinnati. The various through lines are represented at important points of shipment, either by their agents or by railroad association officials, or by agents of friendly initial carriers from those points.

33. The following extracts from "Rules Governing the Transportation of Freight," issued by the Georgia Railroad Commission were put in evidence:

"RULE 6."

"*Regulations Concerning Freight Rates.*—The freight rates prescribed by the Commission are maximum rates, which shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent at all stations, along the line of road, so as to make no unjust discrimination as against any person or locality."

"But when there are between any two points in this state two or more competing roads not under the same management or in the same system, then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between said two points below the standard tariff, without making a corresponding reduction at all stations along the lines of said roads: *Provided*, said reduction shall not make the rates less than the standard tariff rates for the shortest line between the two points. *Provided further*, that before taking effect, the proposed change of rates shall be submitted to and approved by the Commission."

By Circular No. 6 issued April 29, 1880, the Georgia Commission added the following language to "Rule 6."

"*Competing lines, not all within the jurisdiction of the Commission.*—But when from any point in this state there are competing lines, one or more, subject to the jurisdiction of the Commission, then any line or lines which are also subject may at such competing point make rates below the standard freight tariff, to meet such competition, without making a corresponding reduction along the line of road."

The following is an extract from a letter of the Commission dated June 3, 1880, to Virgil Powers, then General Commissioner of the Southern Railway & Steamship Association, now a member of the Georgia Railroad Commission, the complainant in these cases:

"Under the law, freights coming from or going beyond the boundary of the state are not within the jurisdiction of the Commissioners. A shipment from Rome to Charleston, passing over the Rome, Western & Atlantic, Georgia, and South Carolina Railroads, for example, could not in any way be regulated by the Commissioners. This *line* then is not subject to the jurisdiction of the Commission. It competes with *lines* to the sea, however, which are within the jurisdiction of the Commission. All such cases are intended to be covered by Rule 6 to the end that our own roads and seaports may be able to compete with roads and seaports without the state. Shipments *covered* by *note 1, over more than one road in this state*, being shipped from any point in this state to another point in the state, are held to be within the meaning of that note—the intention being to give the railroads the largest liberty in fostering the industries of the state—and each road in such *line* can lower rates on such articles without conflicting with Rule 6."

"Two or more roads in the state desirous of making joint rates between points on their respective roads may make such joint rates on articles not controlled by Note 1, by taking the rate allowed for an equal distance, if the points were on one road, and applying it to the different roads. For example:

First class—Marietta to Atlanta per 100 pounds	20 miles	20 cents
Atlanta to Macon, per 100 pounds	103 miles	48 cents
Macon to McRae, per 100 pounds	76 miles	39 cents
The sum of these locals for 199 miles would be		$1.07

But the rate for 199 miles, if on one road, would be per 100 pounds—first class—70 cents. Now a joint rate of $1.07 or of 70 cents for 100 pounds could be made or a rate between these amounts—the railroads making their own divisions of the total rates between themselves."

In regard to the denial of several of the defendants that they participate in the transportation of property between points mentioned in the complaints under a common control, management or arrangement, upon the facts stated in the findings we decide that the transportation of property between points of shipment and destination named in the complaints is conducted by the connecting defendant lines under a common arrangement for continuous carriage or shipment within the meaning of the first section of the Act to Regulate Commerce.

The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their

lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

Traffic is either state or interstate traffic according to its origin and destination. It is shipped by the consignor in the state where the consignee dwells, or it is not. If not, it is interstate traffic, and when carried over two or more lines, it is, by the fact of having been received, forwarded, and delivered as one through shipment, transported under a common control, management or arrangement, as the case may be, for continuous carriage or shipment.

The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section was intended to cover all interstate traffic carried through over all rail, or part water and part rail lines. The "arrangement" for continuous carriage or shipment is complete whenever the carriers have arranged for delivering and receiving through traffic to and from each other and such an arrangement is necessarily "common."

This construction of the words "common arrangement" as used in the first section of the law is in line with our decisions in *Boston Fruit & Produce Exch.* v. *New York & N. E. R. Co.* 3 Inters. Com. Rep. 493, 4 I. C. C. Rep. 664, and *Mattingly* v. *Pennsylvania Co.* 2 Inters. Com. Rep. 806, 3 I. C. C. Rep. 592, and with other rulings of the Commission.

In several of these cases the through charge to intermediate stations is made by the addition of the terminal carrier's local rate to the through rate in effect to a point on its line. This practice has been disapproved of by the Commission in other cases. *Re Tariffs and Classifications of Atlanta & West Point R. Co.* 2 Inters. Com. Rep. 461, 3 I. C. C. Rep. 19; *Hamilton* v. *Chattanooga, Rome & Columbus R. Co.* 3 Inters. Com. Rep. 482, 4 I. C. C. Rep. 686.

The addition of a local rate to a reasonable through rate in order to fix the through charge to the local station is liable to produce a relatively unreasonable rate to that station. The difference in situation of the basing and local points in respect of through traffic is not properly measured by the local rate for carriage between them. The reasonableness of the added local, *as a local rate*, is not under consideration in a case where the rate complained of is the total charge over different lines. The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is matter for the carriers to determine among themselves.

The rate over through connecting lines is correctly adjusted upon the distance through, and not upon the shorter distances over the several lines. *Coxe Bros.* v. *Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 535. Through and continuous lines imply through rates which must be reasonable rates. *Brady* v. *Pennsylvania R. Co.* 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 131.

Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act to Regulate Commerce by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. *James & Mayer Buggy Co.* v. *Cincinnati, N. O. & T. P. R. Co.*, 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744.

As these cases all stand upon the charge of violation of the long and short haul clause, the fourth section of the statute, it becomes necessary to consider whether the defendants are justified in their conceded disregard of the prohibitive part of the provision. The point of the defense is that the transportation for shorter distances is under circumstances and conditions which are substantially dissimilar to those surrounding the transportation to the longer distance points; and this upon the assumption that they may in any case determine the question for themselves in the first instance.

The phrase "substantially similar circumstances and conditions" occurs in both the second and fourth sections of the Act to Regulate Commerce. An intelligent construction of this phrase involves the duty of ascertaining how it originated in the statute.

The words "under substantially similar circumstances" were in the discrimination clause of the original House Bill reported by the Commerce Committee of the House of Representatives in 1884. In the Reagan substitute bill the words did not appear, nor were they in the bill as it passed the House in January, 1885. The words "under similar circumstances" were used in connection with discriminations in the summary statement of causes of complaint against the railroad system contained in the Report of the Senate Select Committee presented in 1886; and the phrase "under substantially similar circumstances and conditions" was a part of the se-

ond section of the original Senate Bill which was introduced by Senator Cullom.

During the debate upon amendments proposed by Senator Camden and Senator Aldrich some discussion was being had in regard to the word "quantity." Senator Camden proposed that the words "of a like kind of property under substantially similar circumstances and conditions" be substituted for the amendments offered, and the substitute was adopted.

A short history of the framing of the fourth section is given in the opinion of the Commission, in *Re Petitions of the Louisville & Nashville R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31.

The words "under similar circumstances" had been put into a short haul provision by the legislature of Connecticut before the interstate commerce law was enacted and that statute was referred to in the Congressional debates.

The words "under the same circumstances" are in section 90 of the English Act of 1845, and they and also the words "under like circumstances," have been frequently employed by the courts of England.

Whatever use may have been made in English decisons of the word "circumstances" or of the word "conditions" the value of these decisions as precedents to be followed in deciding cases in this country depends greatly upon the similarity of the statutory provision governing the English case to the provision of our law under which the case to be determined is brought. A comparison of certain clauses in English statutes with the second, third and fourth sections of the Act to Regulate Commerce is shown below:

EQUALITY CLAUSE.

English Act.

Sec. 90 Railway Clauses Act 1845.

"And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties or for the purpose of collusively or unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided, that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, *passing only over the same portion of the line of railway under the same circumstances;* and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person traveling upon or using the railway.

UNJUST DISCRIMINATION CLAUSE.

American Act.

Sec. 2, Act to Regulate Commerce, 1887.

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

UNDUE PREFERENCE CLAUSE.

English Acts.

Sec. 2. Railway and Canal Traffic Act, 1854.

Sec. 11. Railway and Canal Traffic Act, 1873.

* * * and no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * * *

UNDUE PREFERENCE CLAUSE.

American Act.

Sec. 3. Act to Regulate Commerce.

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

THE 4TH SECTION OF THE ACT TO REGULATE COMMERCE.

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

At the time of the enactment of this section no similar provision was contained in any English statute. The Railway and Canal Traffic Act of 1888, after re-enacting the undue

preference clause of 1854, also provides in paragraph 3, section 27, as follows:

"The Court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway."

The difference between the English and American acts in respect to long and short hauls is that there the Commission or the Court is *empowered to prohibit* the greater charge for the shorter distance, while here the law itself prohibits the greater charge for the shorter distance when the circumstances and conditions surrounding the transportation are substantially similar, but *empowers the Commission to authorize* the less charge for longer distances.

In England a complaint of greater charge for the shorter haul is triable under the undue preference clause, which is nearly identical with a portion of section 3 of our law, and the English Commission or Court may prohibit such greater charge. But in the United States such a proceeding must be brought under the fourth section of the Act to Regulate Commerce.

In either country a complaint of undue preference or prejudice must (prior to the English Statute of 1888 which shifted the burden to the carrier) be supported by proof of damage which makes the preference or prejudice unreasonable or undue, but in cases brought under our fourth section or long and short haul clause, which particularly describes the act it declares to be unlawful, such proof is not required.

A case of undue or unreasonable preference or advantage or prejudice or disadvantage includes, as the terms themselves imply, consideration of all those circumstances and conditions which bear, not only upon the transportation by the carrier, but also often relate to the value and volume of the traffic, the favorable or unfavorable location of the places involved in the controversy, character of grades on different divisions, lateral lines, and other essential elements which enter more particularly into matters of relative services and relative rates.

This undue preference clause may justly be termed an omnibus provision, enacted first by Parliament and then by Congress to prohibit carriers from doing any act which unduly or unreasonably puts one shipper or description of traffic up in the scale of favor or puts another shipper or description of traffic down to his or its disadvantage or wrong. But when the Act to Regulate Commerce was passed Congress not only adopted that clause but saw fit to go further and specify that certain charges by the carrier would in themselves constitute wrong. The second and fourth sections of the Act—that is, the unjust discrimination and long and short haul clauses—are provisions of this character. Under these sections the carrier must not charge more for like service nor more for less service rendered in the transportation of a like kind of traffic under substantially similar circumstances and conditions. These provisions describe the offense and limit the circumstances and conditions to be considered to those under which the transportation is conducted. The undue preference clause of the English statute, which was copied into the third section of our law, contains no such description or limitation, nor do the words, "substantially similar circumstances and conditions," or any of them, appear therein.

Considerable variation in language is also found in comparing the English equality clause of 1845 with the second or unjust discrimination clause of our law. That the latter covers much more ground must be apparent to the casual observer, and if it were not for the fact that our second section contains the phrase "substantially similar circumstances and conditions" and the English equality clause in its proviso has the words "under the same circumstances" no reference or comparison would be deemed necessary.

The frequent citation of English decisions in cases affecting interstate transportation with manifest disregard of vast differences in facts, time, extent of country, methods of trade and transportation and great dissimilarity in statutory provisions, is ample warrant for the above somewhat extended comparison and for the following examination of some English cases which have been quoted for the purpose of influencing decisions in this country.

The case of *Attorney General* v. *Birmingham & Derby Junction R. Co.* (2 Ry. & Can. Cas. 124), was recently cited in a case brought under the second section of the Act to Regulate Commerce. The English case was decided in August, 1840. The American case was tried in 1890, fifty years later. The railway in the English case was operated under a special act which contained an equality clause similar to the proviso of section 90 of the English Act of 1845, above quoted. A passenger journeying to London over connecting railways was charged by the first railway for the carriage between two points on its line less than it charged to another passenger who only traveled between the two points on the first carrier's line, but the through charge to London was not less than the charge for the local or intermediate journey. The case was dismissed because prejudice to the latter class of passengers was not shown, and for the further reason that the higher rate charged was not in itself unreasonable. In that case the differ-

ence in destination made out the difference in circumstances which the special act required should be "the same." To charge less per mile for greater distances is a common rule of transportation and its legality is well settled.

The case in which the foregoing was cited related to charging a party of ten or more persons less *per capita* than was charged to single passengers, the journeys of the party and of the single passenger being between the same points, and in the same train; it was brought under a provision of our law which merely specified that the circumstances and conditions should be *substantially similar*, and not *the same*, and its phraseology is entirely different from that of the English Equality Clause of 1845. The fact that charges are not unreasonable *per se* does not prevent their being relatively unreasonable or constituting unjust discrimination under our second section by reason of being unequal. If the circumstances and conditions are substantially similar for like service, the discrimination is declared in the law to be unjust, but the English Statute required the circumstances to be the same.

The case of *Hozier* v. *Caledonian R. Co.* 1 Nev. & McN. 30, was also cited in the same case as showing that the parties must be shown to be competitors. So, also, in like manner were *Jones* v. *Eastern Counties R. Co.* 1 Nev. & McN. 45; *Painter* v. *London, B. & S. C. R. Co.* 3 C. B. N. S. 702, and *Infracombe T. C. Co.* v. *London S. W. R. Co.* W. N. 289, referred to. All these cases were tried with reference to undue preference or prejudice, which had to be shown to exist before the defendants could be held guilty of unlawful action. But in the case they were cited to influence no such showing was called for. Can it be said that the cases thus cited might not have been differently decided if tried under a provision of law like our second section, which not only forbids but defines the thing forbidden? The English statutes do not show any such definitive rule as is contained in the second and fourth sections of the Act to Regulate Commerce. Section 90 of the 1845 statute, in its proviso required equality when the carriage is over the *same portion of the line* under the same circumstances. Section 2 of our Act only requires the traffic to be like, the service to be like and contemporaneous, and the transportation under *substantially similar* circumstances and conditions. The provisions are so different in terms that the same set of facts might constitute immunity under the English provision and guilt under our law. Indeed, the Supreme Court of the United States tersely says of the English acts: "These traffic acts do not appear to be as comprehensive as our own and may justify contracts which, with us, would be obnoxious to the long and short haul clause of the Act, or would be open to the charge of unjust discrimination." *Interstate Commerce Commission* v. *Baltimore & O. R. Co.* 145 U. S. 263, 36 L. ed. 99. Take the case of *Hozier* v. *Caledonian R. Co.*, above mentioned. This was a long and short haul case. The decision was under the undue preference clause and to the effect that there must be competition of interest, or the complainant must show personal disadvantage, before he has title to complain, the fact that the complainant had frequent occasion to travel not being sufficient. Would this decision be possible under our fourth section?

The case of *Jones* v. *Eastern Counties R. Co.* 1 Nev.& McN. 45 is another passenger case where more was charged from one station than from another station situate a further distance on the same line. The rule was refused because *undue preference* was not shown. The mere suggestion of undue preference was held to be insufficient. Under the fourth section of the Act to Regulate Commerce, proof of the greater charge for the shorter distance would have been sufficient, for there was nothing whatever in the case upon which the defendant could base justification under our long and short haul clause. In a brief for defendants in these cases of the Georgia Railroad Commission this case of *Jones* v. *Eastern Counties R. Co.* is cited to show that through and local traffic constitutes such difference that the greater charge does not unduly prejudice the shorter distance points, and also that when active competition exists at the longer distance point it affords a good reason for making the lower charge. If our long and short haul clause did not exist and the case were brought under the undue preference provision the through and local traffic defense might possibly have some weight, but in the face of the mandate contained in the fourth section the claim of justification on the ground that one traffic is local and the other through is absurd. To allow such claim would be to defeat the object of the section. The rate on through traffic to the longer distance point may be proportionately less than the rate on local traffic to the intermediate point, but under the fourth section it cannot be less in the aggregate. As to competition, the position of the Commission has hitherto been well defined. Some competition does afford justification and some does not, and this matter we expect to treat extensively further on in this report. But the Jones case had in it no element of competition. Whatever was said there in relation to through and local traffic and competition was spoken by the judges at the trial. The decision was that the mere suggestion of preference because of the greater charge for the shorter distance was insufficient.

The same brief cites *Strick* v. *Swansea Canal Co.* 16 C. B. N. S. 245, decided in 1864. A pro-

viso in a canal act was similar to the proviso in section 90 of the 1845 statute. It was held competent for the company to carry at a lower rate for a particular individual in consideration of a large guaranteed minimum toll in order to enable them (the company) to enter into competition with a rival line of railway. We think other English decisions in similar cases have a different conclusion, but whether this is true or not it is too manifest for discussion that our second section would forbid the ruling here (*Providence Coal Co.* v. *Providence & W. R. Co.* 1 Inters. Com. Rep. 363, 1 I. C. C. Rep. 107), and moreover, that such a contract would in this country be held in contravention of the common law. *Hays* v. *Pennsylvania Co.* 12 Fed. Rep. 309.

In a case lately decided by the English Commission entitled *Liverpool Corn Trade Asso.* v. *London & N. W. R. Co.* L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216, the conflict of English decisions was commented upon as follows:

"The question had several times been mooted whether a rate so low as, when compared with another, to amount prima facie to an undue preference, could be justified on the ground that it was rendered necessary by the existence of competitive modes of carriage, whether by land or water. The state of the authorities upon the matter was far from satisfactory. The *dicta* in *Harris* v. *Cockermouth R. Co.* 3 C. B. (N. S.) 693, at p. 713; *per* Cockburn, *L. C. J.*, and in *Ransome* v. *Eastern Counties R. Co.* 4 C. B. (N. S.) 135, at p. 177, *per* Crowder, *J.*, are I think, very difficult to reconcile with the decision in *Budd* v. *London & N. W. R. Co.* 4 R. & C. T. Cas. 393, *n.*; 36 L. T. (N. S.) 802. The manner in which the question how far the necessities of competition will justify preferential charges was touched upon in *Garton* v. *Bristol & Exeter R. Co.* 6 C. B. N. S. 639, throws no additional light upon the subject. Budd's case, 4 R. & C. T. Cases, 393 *n.*, 36 L. T. (N. S.) 802, is open to the further observation (for which I am indebted to *Sir* F. Peel) that it is in conflict with the subsequent Scotch case of *Murray* v. *Glasgow & S. W. R. Co.* 4 R. & C. T. Cas. 456, 11 Court Sess. Cas. 4th Series, 205, in the court of session, and the case of *Denaby Main Colliery Co.* v. *Manchester, S. & L. R. Co.* 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, in the English court of appeals, where it was laid down that an action will not lie to recover overcharges made in violation of the provisions of the Act of 1854, against undue preferences. When the Denaby Main case, 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, was in the House of Lords the question was not decided, and the state of the authorities has been discussed by Cave, *J.*, in his judgment in *Lancashire & Y. R. Co.* v. *Greenwood*, 21 Q. B. Div. 215, 35 Am. & Eng. R. Cas. 537."

In a still more recent case decided in the English Court of Appeal, the above mentioned cases of *Harris* v. *Cockermouth*, *Denaby Main Colliery Co.*, *Ransome* v. *Eastern Counties R. Co.* and also *Eversheil's Case*, L. R. 3 App. Cas. 1029, were discussed; and the case of Budd was held to be no longer law.

The ruling on the main question presented by the appeal was that the railway commissioners or the court *may* take into consideration the existence of a competing route between the same points in considering a case of alleged undue preference.

Phipps v. *London & N. W. R. Co.* [1892] 1 Q. B. 229.

In that opinion *Lord* Herschell said of the Equality and Undue Preference clauses:

"Where there is a breach of the equality clause, no doubt you may sue to recover the difference on the basis that you can compel the railway company to pay you back anything which you have paid over what, for precisely the same service, they have charged to another. But under the Railway and Canal Traffic Act, as was pointed out in the House of Lords, the company have their option. They may put up one charge, they may put down the other. It is not an equality clause; it is only a clause relating to undue preference or advantage."

"The words of the equality clause have no elasticity at all; there are no outside circumstances to be taken into consideration, and it is not a question of regarding the position of the one trader as compared with the other, and then saying whether there is any undue preference. It is an absolute rigid equality which is demanded by the statute."

These words of the learned English judge clearly illustrate what we have said in relation to our own second and fourth sections as compared with the undue preference section which was copied from the English statute into our law.

It is unnecessary to continue this examination. In a case purely of alleged undue preference or prejudice the English cases have direct application. Even in cases under our second and fourth sections, English cases brought under the undue preference clause in which the decision has held undue preference to exist, have value as showing how strictly the English Commission or Court has applied the broad language of the clause to a particular set of facts, but when English decisions under the undue preference clause are cited by a carrier in justification of its action under the strict language of our second and fourth sections, the citations have greatly diminished force. These sections apply only against rates in specific cases, but the undue preference clause or third section is inclusive; it applies both to rates and facilities, and says generally to the carrier, you shall not in any manner un-

duly prefer one person or kind of traffic over another, and leaves it to the Commission or the Court to say when the undue preference is given. In the second and fourth sections what is unlawful is clearly defined, the circumstances and conditions of the transportation being similar in substance. We think, therefore, that while English cases are valuable as defining undue preference or prejudice their value is greatly limited in cases where the statute itself describes the offense it declares unlawful.

In regard to such elements of transportation as through and local traffic and cost of service we cannot do better than reiterate what was held by the Commission in *Re Louisville & Nashville R. Co.:*

"The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor, that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

"Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof."

Disproportionate expenses of carriage and great variation in the volume of traffic to various points are ever present in railroad service, were within the knowledge of Congress when the section was framed, and must of necessity have been considered as not constituting substantially dissimilar circumstances and conditions, in other than extraordinary cases, for under the contrary view it is manifest that in a large majority of cases the design of the section would be defeated. As above stated, a defense of the higher rate for the shorter haul which is based upon cost must amount to a practical demonstration that the short haul traffic is exceptionally expensive or the cost of the long haul transportation exceptionally low.

It is unnecessary to go over ground which was so carefully covered by the Commission in the Louisville & Nashville opinion, and we will at once proceed to the main question: What are the circumstances and conditions which a carrier may in the first instance take into account in fixing rates for longer and shorter distances over its line?

Under necessary and well settled rules of railroad transportation essentially different circumstances and conditions constantly arise. The section says, "The transportation of a like kind of property under substantially similar circumstances and conditions." A barrel of flour is a like kind of property with a carload of flour, but they are different units of quantity, and the transportation of a carload is not under substantially similar circumstances and conditions with those which apply to the shipment of a barrel, or, under present rules of transportation, any number of barrels less than a carload. Other examples would be one horse and a carload of horses, furniture knocked down or set up, small lots of grain in sacks or loose in carloads, and so on through the great variety of articles of commerce which seek carriage in different quantities and forms.

It is proper also to recognize the right of a carrier to charge different but duly published rates according as its liability is diminished by proper conditions stated upon the bill of lading accepted by the shipper or upon the ticket accepted by the passenger whereby the carrier, under such special contract, secures to itself some lawful pecuniary or economic advantage. These and other transportation methods not necessary or possible to specify constitute many kinds of essentially dissimilar circumstances and conditions arising upon its own line by which a carrier may rightfully be governed.

Circumstances and conditions affecting transportation also arise through competition with other carriers for business; that is, circumstances and conditions which do not wholly arise upon the carrier's own line.

The necessity for a construction of the fourth section of the Act became apparent almost immediately after the organization of the Commission. A large number of applications for relief were then filed by roads operating in all sections of the country. Investigations were held in many places and on June 7, 1887, the applications were disposed of in the opinion above quoted from, the Louisville & Nashville case, and it was intended that the construction there laid down should be sufficient for all cases based on similar grounds which might thereafter arise under the fourth section; but the construction put upon the statute at that time seems to have been misapprehended in some essential particulars by carriers.

The Commission held in that case that the phrase "under substantially similar circumstances and conditions" in the fourth section *is used in the same sense* as in the second section; and under the qualified form of prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for the shorter distance. The Commission said in regard to the employment of the same qualifying phrase in both sections 2 and

4: "It will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section (2) as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject matter with which section 4, where it is employed, has to do, namely, the charges for transportation service."

In all cases under the second section the actual facts are of necessity entirely within the carrier's knowledge. The qualifying phrase, under substantially similar circumstances and conditions, used in the same sense in the second and fourth sections, has no greater force or different meaning in the one than in the other.

In reviewing what was held in the Louisville & Nashville case the precise wording of the statute must not be overlooked. The first part of the section forbids carriers to charge more for the shorter than for the longer haul when the transportation is under substantially similar circumstances and conditions. The other portion of the section, that which relates to a relieving order by the Commission, permits such an order only for the purpose of a lesser charge for the longer haul, but the discretion of the Commission is not limited, except that the case must be special—must present a question requiring authoritative action. The Commission said in that case that if the section had passed as it once stood without containing the qualifying phrase "under substantially similar circumstances and conditions" the Commission might have exercised its discretion in all cases where the circumstances and conditions appeared to be different, and it would have entered upon its duties "with a distinct understanding of the task imposed, even though its adequate performance might have been out of the question, but modified as it now stands the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful."

But the Commission clearly foresaw at that time that a construction of the statute which would deliver even questions purely of fact unto the carrier's judgment in the first instance, must be accompanied by a statement of principles on which such judgment must be based or the greatest confusion and litigation would follow, and thereupon proceeded to lay down for the guidance of carriers rules which would not warrant them in making charges greater for shorter distances than those established for longer hauls.

The rules limiting the judgment of the carrier in respect to greater charges for shorter hauls were briefly stated as follows:

"Sixth: The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction the shorter being included in the longer distance it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

"Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

"Nor that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or some other branch of industry.

"Nor that it is designed to build up business or trade centers.

"Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.

"The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic."

The Commission might have stopped there and directed the carriers to withdraw their applications, leaving further construction of the section to come up in cases of complaint or subsequent application for relief. But before laying down any principles except the construction as to the carrier's right of primary determination it said:

"It is manifestly important to the public interest, as well as to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their applications that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented and leave out of view such other grounds of relief, if any, as are not yet formally brought forward."

The Commission then proceeded to discuss and lay down the rules above set forth. It being apparent that competition of various kinds would constitute a main subject for consideration in cases of long and short hauls the Commission discussed the force and effect of the competition of carriers not subject to the law, and also that of carriers subject to its provisions, for the purpose of arriving at such

general conclusions in regard thereto as would properly direct carriers in establishing rates for longer and shorter hauls.

The Commission said generally on the subject of competition as creating dissimilarity in circumstances and conditions that Congress in rejecting the fourth section as introduced in both of its branches, and insisted upon in the bill passed by the House, "understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and among others in cases where the circumstances and conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue; and water competition was beyond doubt especially in view."

But the Commission immediately said in that connection that Congress must be supposed to have allowed this because the public interest required it, and "that only legitimate open and fair competition was meant, not everything that has been done under the name of competition and which in many cases has been equally destructive of public and private right. Among common abuses have been the granting of special favor in exceptional rates, rebates, drawbacks, etc., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has also been favoritism between places and communities, as a result of competition; but this is no longer permissible." It was also expressly stated in the opinion that the prohibitions against unjust and unreasonable rates and unjust discriminations apply as well to cases under section 4 as in other cases.

In taking this view of the meaning of the statute the Commission undoubtedly relieved itself of many onerous duties in the consideration of cases arising on applications for orders granting leave to charge less for the longer distance on the score of competition; and the difficulty of discharging these duties was clearly set forth in the beginning of the opinion. By defining the kinds of competition which might entitle the carrier to make less charges for the longer distances and thereby justify consequent greater charges on its line for shorter hauls the Commission has recognized that competition of that character constitutes a state of facts of which the carriers could judge in the first instance without giving color of right to any charges on the competing line.

Now what kind of competition did the Commission hold might, by warranting a lesser long haul charge, justify carriers in establishing greater charges for shorter hauls? The answer is: Competition with water carriers. Competition with foreign railroads. Competition with railroad lines wholly in a single state. Such carriers are not subject to the law. They are independent of all regulation by the Federal authority, and consequently the carrier, subject to such regulation, in first determining for itself to charge less for the longer distance because of such competition, does not by meeting the competitive rates give color of right to rates on the other competing lines, for the law does not regulate such rates.

The Commission described one other kind of competition which might entitle a carrier to charge less for a longer haul and thereby justify short haul charges. This was in "rare and peculiar" cases of competition with a railroad subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition. This class of cases was illustrated by two instances of very circuitous routes; one being where the competing lines run from the point of shipment, one in a direct line to the longer distance point while the other runs in the opposite direction and its traffic reaches the longer distance point by taking a wide circuit. This was the Pittsburgh or Youngstown case. The other illustration was that of roads running north and south delivering to connections at terminals or intermediate junctions, and competing to and from a common market with direct east and west roads which by reason of greatly less distance make the rates to the longer distance point.

The belief was indulged in that the carriers by strictly observing the limitations put upon their judgment in that opinion, and at the same time obeying the other provisions of the statute, would find little necessity for applying to the Commission for relief; that the operation of the law upon two carriers subject to its provisions would render competition between them an infrequent cause for seeking aid in an order relaxing the rule. But from the outset the Commission realized that the provision for relief in the fourth section would promote the interests of interstate commerce and uphold the rights of carriers by preserving competition between carriers subject to the Act which the Commission should ascertain to be legitimate. The opening part of the opinion under consideration states the view of construction which was thereinafter discussed and approved: That "the order for relief would be needful only when the case was not one of *plainly* dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge."

Further on the Commission said:

"The later clause in the same section which empowers the Commission to make orders for relief in its discretion does not in doing so re-

strict it to a finding of circumstances and conditions strictly dissimilar but seems intended to give a discretionary authority for *cases that could not well be indicated in advance by general designation*, while the cases which upon their facts should be acted upon (by the carriers) as *clearly exceptional* would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical and this section may be enforced without serious embarrassment."

It would be impossible to "indicate in advance by general designation" all cases of competition between carriers subject to the Act that should or should not come under the general rule. Competition between carriers subject to the Act does not constitute plainly dissimilar circumstances and conditions, for reasons which we shall now proceed to state, and the duty of primarily determining the question is laid upon the Commission by the fourth section of the statute.

The necessity for supplemental construction at this time arises from the fact that carriers in the operation of their lines have not held strictly to the principles laid down in the Louisville & Nashville opinion, under a possible misapprehension of the scope of that decision.

In stating in that opinion what kinds of competition might entitle the carrier to make lesser long-haul charges, or that create dissimilar circumstances and conditions under which it would be justified in charging more for shorter hauls, we now think, in the light of more than five years operation of the statute, that the Commission should not have included in such statement, "rare and peculiar cases of competition between railroads subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition," if this language in the opinion was fairly susceptible of the interpretation which the carriers have put upon it. As an exception it was not consistent with the otherwise harmonious theory on which the whole opinion was based.

It constituted an exception to the clear reservation for the primary action of the Commission in cases involving competition between carriers subject to the Act which is implied in the fourth section. Because the instances of such "rare and peculiar" cases cited in the opinion are such as indicate a hardship that the Commission would not fail to recognize and by an order under the provisory clause relieve, if applied for, was no good ground for permitting the carriers to determine for themselves what cases of such competition are *rare and peculiar* or when any cases of strife for traffic between carriers subject to the law will, if the strict rule of the fourth section is applied, be "destructive of legitimate competition." From the fact that many carriers have, as was natural, expanded the permission restricted to "rare and peculiar cases" into a privilege to presume that whenever they engage in competition with other carriers subject to the Act the case becomes "rare and peculiar," the exceptional ruling has become inoperative, delusive, and opened the door to many evasions of the statute. We think there is nothing in the statute which warranted the exception.

The prohibitory part of the fourth section of the statute is followed by this proviso:

"That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the Commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this Act."

Force must be given to this part of the section as well as the other.

In the framing of the fourth section it appears that a proviso of this character was made a part of it before the words "under substantially similar circumstances and conditions," were inserted in the preceding general rule. The debate indicates that the then object of the proviso was to give the Commission substantially discretionary power to relieve carriers from the operation of the general rule. The subsequent incorporation of the clause, "substantially similar circumstances and conditions" in the prohibitory part of the section, the same phrase being already in the second section, could only have been intended to provide for a class of cases where the carrier is capable of determining for itself whether the transportation conditions are similar, and this it can easily do when the competition is with carriers not subject to regulation under the Act. If it had been intended by that phrase to cover all cases of dissimilar circumstances and conditions apparent and actual, regardless of whether fairness and justice to carriers, shippers and localities demanded the exceptional charge, then the proviso would have been stricken out when the similarity clause was inserted. But the debates indicate that both the proviso and the clause were regarded as necessary, and that the proviso would apply to a class of cases not intended to be covered by the similarity clause.

In the absence of anything in the phraseology of the statute which clearly indicates to what class of cases these two provisions respectively apply, it becomes necessary to seek for an interpretation that is reasonable and will give effect to both clauses. A statute must, if possible, be so construed as to give effect to all its provisions.

The competition of carriers subject to the Act with carriers not amenable to its provisions plainly constitutes dissimilar circumstances

and conditions which justify a reasonable departure from the rule of the fourth section if the competition be actual and controlling in respect to traffic important in amount. This includes the competition of independent water lines, independent state railroads, and foreign railroads, where they have not so connected themselves with the carriage of interstate traffic as to thereby become subject to the Act.

Of the similarity or dissimilarity in the circumstances and conditions which originate in real and tangible competition with lines not subject to the Federal authority the carrier is obviously well qualified to judge and determine for itself in the first instance. Such circumstances and conditions have direct bearing upon traffic over the line and are not subject to qualification by a multitude of other facts pertaining to lines of other carriers subject to Federal regulation. For instance, the competition between rail carriers both subject to the Federal law for business between two points does not *because it exists* constitute circumstances and conditions of transportation which one carrier is competent to say will warrant exceptional rates on its road, even though the other may have the shorter line. Such a case presents questions that can only be properly determined by the regulating authority created by the law. Rates on the competing line may or may not be lawfully adjusted, and the low rates to the competitive point may be remunerative on the shorter line but unreasonably low and unprofitable over the longer line. This is a case for investigation by the Commission, not only with reference to the long line but it also involves a scrutiny of the rates of the competing road and the reasons which cause the low rates to be charged. Another consideration is that the carriers if left to themselves are likely to force the already low rate lower and lower, whether it originally paid both carriers or not, until finally a point is reached where other traffic on both lines is burdened with part of the cost which properly belongs to the business competed for; charges to many points on both lines are thrown out of just relation, and, what is still worse, the competition which has become illegitimate is likely to have so affected rates of roads not interested in the original strife, but which have felt obliged to give relatively lower rates to competitive points on their lines in the same territory, that they too stand in unlawful light. This is illustrated to a considerable extent in the territory now under consideration. Competition unrestrained will naturally develop into reckless warfare, or, through that combination which is the logical result of destructive or ruinous competition, perpetuate a system of rates which is burdensome to many communities while it unduly favors a few, and yet brings no additional returns to the carriers concerned. The law-making power never intended that competition should have such unrestrained and disastrous sway before the remedy of regulation should be invoked and applied.

But competition between carriers subject to the Act to Regulate Commerce *may* furnish grounds for disproportionate rates on the line of one of the carriers, and when such a railroad company meets a stronger competitor in the strife for business between the same points, such a case should, if the weaker line will gain some profit from the competitive rate, be brought to the attention of the Commission as a *special case* for relief under the proviso of the fourth section. The Commission will investigate the matter, and having in view the rights of both carriers and their duties to the persons and communities they serve, equitably determine the questions involved.

The regulation provided by the Act to Regulate Commerce is not intended to limit or restrict, but rather to preserve and encourage legitimate competition between carriers subject to its jurisdiction; but the legality of such competition should in no case be arbitrarily determined by the competitors themselves. Those who are subject to the law can never find excuse for disobedience in the disobedience of another and neither should be allowed to judge of what constitutes obedience on the part of another. Competition between carriers subject to the Act, to be legitimate, must be based upon actual compliance with the provisions of that law. When the competing carrier is not subject to the Act that fact alone may constitute a substantial dissimilarity in circumstances and conditions, because the rates of the competing carrier are not subject to regulation under the statute, so that there is no room for presumption or doubt in such a case.

In such a case it is easy to see that it was wise for Congress to allow the carrier to act independently of the regulating body in deviating from the general rule, but in a case where both carriers are subject to the statute there can be no presumption of the existence of facts that would warrant a departure from that rule, and the question whether they do exist or not must necessarily be a mixed question of fact and law depending on various considerations, as hereinbefore shown, which the regulating body must pass upon; and complicated as such a question is herein shown to be, it would be contrary to all analogy to allow one of the parties in interest to determine for itself. It would be a novelty in the drafting of statutes to charge a person who is made subject to the law with the solution of such difficult and intricate problems as must arise under the fourth section of this statute on the claim of a right, arising from competition with

another carrier also subject to that law, to disregard its general provision, and which Congress foresaw could only receive just solution by wholly disinterested minds. The protection of the law extends equally to carriers and the public, and no other interpretation of its provisions than that which awards even handed justice to both is admissible.

The line between the right of a carrier to conclude for itself in the first instance and the necessity of applying to the Commission for relief we think is sharply drawn at the point where the carrier is manifestly unable to rightfully decide.

We think that in no case is there any presumption of dissimilarity of circumstances and conditions where the competing lines are both subject to the Act, and there being no such presumption neither road can deviate from the general rule on its own motion, but must apply for relief under the proviso clause of the section, and the burden will rest upon the road seeking such relief.

Under that proviso there seems to be no limitation upon the power of the Commission to grant relief when, upon consideration of all the facts the Commission is satisfied "that the interests of the commerce of the country and common fairness to the common carriers require that an exception should be made."

It is difficult to see why this proviso is not broad enough to enable the Commission to relieve all cases of hardship under the fourth section arising from competition between carriers subject to the Act, including many of the embarrassments now felt by American carriers in competition with Canadian carriers which may be subject to the Act in respect to the traffic competed for.

The foregoing has been especially directed to the competition of carriers subject to the Act between the same points.

The same course should be taken when carriers meet the competition of other lines which carry traffic to the same point but from different points of origin. The strife for trade between different markets seeking transportation for like commodities to the same locality is undoubtedly one of the most potent commercial forces of our time. But a common carrier cannot rightfully assume that this or that market upon its line is entitled as a matter of right, in shipments to a given point, to rates which another carrier sees fit to give from a market on its line to the same point. It does not follow that markets competing for trade in the same territory must enjoy similar rates in order to compete with each other; and the carrier which serves one market has no right to assume that substantially equal rates must be given. Market competition does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the 4th section in charging more for a shorter than for a longer distance over their lines. To determine the force and effect of such competition involves commercial considerations peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation by the carrier is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of competing localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines. Under the 4th section where doubt exists as to the existence of facts which would legitimately force a lower rate for the longer haul, and we think doubt must always exist where the competing carriers run from different markets, the carrier cannot assume to solve it. The propriety of applying to the Commission for relief in such a case is apparent.

To repeat the idea above discussed, the competition of carriers subject to the law between the points mutually served, or competition between different markets to the point where competing lines join, does not merely because it exists make out the dissimilar circumstances and conditions upon which a carrier may on its own motion base a lower rate for one point, while it keeps in effect a higher rate for a shorter distance over its line. They are not presumptively dissimilar. Investigation by the Commission may, with no wrong to the carrier, but with permanent benefit to the places they serve, result in bringing charges to all points in the immediate territory into closer conformity with the law, and render a lower rate for the longer distance unnecessary, or else furnish sound reasons for its being sanctioned. Regulation having been provided by Congress, its application is not only constant, but the machinery of the law is at all times available by the carriers governed, as well as by the public which the carriers serve.

The *special cases* referred to in the proviso of the fourth section, in which the Commission is empowered to make investigation and grant relief from the requirements of the general rule, include all cases that primarily involve questions of regulation over the respective competing lines. The line which forces the lower rate may itself be guilty of disproportionate rates. Such disparity may not be so great as to have caused a complaint to the Commission by the patrons of the line, notwithstanding the burdens imposed may be

manifest, but when rates so adjusted are made the basis of another line's departure from the rule of equitable charges, the situation imperatively calls for the intervention of the regulating authority, both in the interests of the connecting roads and of their patrons.

A construction of the law which allows a carrier to determine for itself in every instance whether the lower rate for the longer distance is warranted, is liable, when such lower rate is adopted by it, to cause another carrier serving the same territory to feel justified in establishing a lower rate for the longer distance on its line to the same point or to a different point appearing to require relatively favorable rates; and is also liable to cause other carriers in the same section to take similar action; thus creating an artificial or abnormal situation which constantly provokes belief and claim of unjust discrimination and endless controversies between shippers and carriers. Such a situation, left unchanged, presents a railroad problem most difficult of solution. But a construction of the law which will compel a carrier, before putting in a lower rate for the longer distance, to seek relief by a method which will involve a careful examination of the traffic conditions as to all the lines competing for carriage in the same territory, would tend to promote a solution more beneficial for all parties.

A concise statement of this construction of the fourth section on the point above discussed is: The carrier has a right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise *wholly upon its own line* or through competition for the same traffic with carriers not subject to regulation under the Act to Regulate Commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge *less for the longer distance* except upon the order of this Commission.

Aside from overruling the "rare and peculiar cases" exception, this construction is no departure from previous rulings and is not new. Soon after the Louisville & Nashville opinion was promulgated by the Commission. *Judge* Pardee of the United States Circuit Court approved this construction in *Missouri Pac. R. Co.* v. *Texas & P. R. Co.* 31 Fed. Rep. 327. Upon *ex parte* application of the receivers of the defendant for advice in relation to the construction of the fourth section of the Act to Regulate Commerce, the court held:

Under section 4 of the Interstate Commerce Law, relating to the charges for the long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstances or conditions which produce dissimilarity, the doubt should go in favor of the object of the law, and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar and the result to the carrier is injurious, relief can be had only through the commission.

Neither is our view in serious conflict with the opinion expressed by *Judge* Deady in *Ex parte Koehler*, 1 Inters. Com. Rep. 317. The *Ex parte Koehler* cases all involved water lines and the rulings were made with especial reference to the influence of competition by that mode of carriage; and the language of the judge in the course of discussion must be construed with like reference.

The case of the *Interstate Commerce Commission* v. *Atchison, T. & S. F. R. Co.*, 50 Fed. Rep. 295, was brought to enforce an order of the Commission issued against the defendants in a proceeding brought before it by the San Bernardino Board of Trade. In the case before the court the defendants took a great deal of additional evidence upon the subject of water transportation at the longer distance point. The court discussed the evidence at considerable length and held that such means of transportation actually exists, is actually and actively seeking the traffic, and that shipments by water are increasing. The decision turned upon this showing, and the language of the court in the course of the discussion must be held to have been made with reference to the facts therein set forth. The principle stated by the court that to render lawful a greater charge for a shorter than for a longer haul, under section four of the Act, it is not necessary to first obtain authority of the Commission; that such charge is lawful if the circumstances and conditions are not in fact substantially similar and the carrier may determine for himself, subject to a liability for violating the Act, if, on investigation, the fact be found against him, is clearly in line with our view as to competition by water lines, or the competition of foreign railroads, or the competition of independent state railroads. The decision was not rendered upon any controlling considerations of competition between carriers subject to the law.

In the case of *Osborne* v. *Chicago & N. W. R. Co.*, 48 Fed. Rep. 49, *Judge* Shiras in charging the jury, said:

"Whether the railway company was justified by a cut rate, making what was called in argument 'illegitimate competition,' and circumstances of that kind which grow out of the handling and management of the railroad business of the country, by other competing lines, and its effect upon the business of the defendant company, in the judgment of the court, is a question that cannot be submitted to you. Questions of that kind are for the

judgment and determination of the board of commissioners appointed under this Act, and the courts and juries, when they are called to act upon particular cases arising under this Act, where it is denied that the law has been violated, are only authorized to determine the question whether in the service rendered, the character of the property, its conveyance, and other facts which inhere in the carrying of freight upon the particular line which is charged with wrong doing, there existed dissimilar circumstances and conditions relieving this company from the charge of collecting a larger rate for the shorter haul over the same line, in the same direction, and under otherwise substantially similar circumstances and conditions."

This decision distinctly follows the construction that where doubt exists, the circumstances and conditions should be taken as substantially similar. Doubt always exists as to the legitimate force of the competition between carriers subject to the law which one of them claims to compel the making of exceptional charges over its line. The law restrains both alike and the true presumption is that they have equal advantage under the law. But if hardship is encountered then relief, temporary and continuing, may on proper showing be obtained under the proviso of the fourth section.

In a case where the competition of a state railroad which in no way made it subject to the Act, was alleged to justify the lower rate this Commission sustained the defendant and laid down the following principle:

"The words 'substantially similar circumstances and conditions' as found in the second and fourth sections of the Act to Regulate Commerce in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example, if the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent state railroad, *which is not subject to the Act to Regulate Commerce*, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line." *Business Men's Asso.* v. *Chicago, St. P. M. & O. R. Co.* 2 Inters. Com. Rep. 41, 2 I. C. C. Rep. 52.

This ruling excludes the competition of carriers subject to the Act from the carriers' judgment.

The distinction herein made between the competition of carriers' subject to the Act, and the competition of such a carrier with those not subject to the Act, is also applicable to competition alleged in cases under the second and third sections, and the Commission so considered in *Harwell* v. *Columbus & W. R. Co.*, 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 237.

In a case where railroad competition was alleged by the respondent to justify the exceptionally lower rate, which came before the Commission for investigation in July, 1888, it appeared that the lower rate was caused by what the respondent termed unfair competition by the competing line, and the evidence tended strongly to show that the long haul rate was unreasonably low. *Re Chicago, St. P. & K. C. R. Co.* 2 Inters. Com. Rep. 137, 2 I. C. C. Rep. 231. In its annual report to Congress for that year the Commission said of its decision in that case:

"The reasoning seemed strong and was certainly plausible. But the question involved was a question of the construction of the Act, its answer was to be arrived at on consideration of what was probably the legislative intent. It was seen that the circumstances and conditions relied upon as entitling the carrier to make the exceptional rates were not circumstances growing out of natural causes; they were not the outcome of competition by water routes; there was no peculiarity of the line which would make the rates at the termini and at other stations relatively just; the only dissimilarity in the circumstances and conditions which attended the making of the rates at the different points was that at the termini there was sharp railroad competition and at the intermediate stations there was not.

"*But this was a state of things that, at the pleasure of the railroad companies acting generally, or even of single companies disposed to act in hostility, might be made to exist at any point of railroad connection in the country; and if the greater charge on the shorter haul was admissible in the case under investigation the rule of the fourth section would be of no practical value whatever. Any railroad company might by its action absolve a competitor from its obligation, and be itself absolved in return. The legislature never intended this consequence. It did not intend, as the Commission believed, that the carriers subject to the law should at pleasure thus make the rule of the statute ineffectual.*

"The carrier under investigation conformed to this conclusion and graded its rates accordingly, and the objectionable rates made by the carrier complained of were also soon discontinued."

It may not be out of place here to refer to late English construction of the law of undue preference contained in the Act of 1888 as applied to a case where competition with other railways between the same points and al

water transportation was relied upon to justify a lower charge for a longer distance, but the shorter was not included within the longer distance.

A clause in the statute relating to the public interest and interests of the railways is carefully construed. As to the public interest it was held that the fact that it is seldom not in the interest of the public to have a choice of competing routes does not decide the question. "*It is clear that the Act contemplates the possible existence of competition which may not be in the interests of the public although it be effectual to secure traffic.*"

After considering the words "public interests" the following rules are stated in the English opinion: "It is however, as a general rule, against the public interests that uncertainty should be introduced into trade by frequent or violent or *arbitrary* changes of the circumstances under which people engaged in business have to carry it on and to make their living. It is, as a broad general rule, *against the public interests that artificial circumstances*, which at the will or caprice or for the self interest of any man, or body of men, may be swept out of existence as lightly as they were perhaps created, *should be permitted to interfere with the natural course of trade. Liverpool Corn Trade Asso.* v. *London & N. W. R. Co.* L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216.

This English case clearly illustrates our construction of the law that the existence of competition between carriers subject to the Act does not justify them in the first instance in charging a lower rate for the longer distance. We do not think that case a proper one to cite as a precedent in a long and short haul case under our statute, for the circumstances of carriage are very different. It was purely a case of relative rates of undue preference between markets, but it shows how strictly the English authorities interpret the broad language of their law in accordance with the evident intent of the law-making power.

A proceeding known as the "Import Rate Case," and instituted by this Commission to enforce its order restraining carriers from charging less for services rendered in carrying import traffic from American seaports, when shipped from foreign ports under through bills, than they charge for carrying domestic shipments of like kind of traffic between the same points was decided in the United States Circuit Court, Southern District of New York, on October 5 of the present year. The long and short haul question was also to some extent involved. Wallace, *J.*, writing the opinion, which sustains the ruling of the Commission, in conclusion said:

"The Interstate Commerce Act would be emasculated in its remedial efficacy, if not practically nullified, if a carrier can justify a discrimination in rates merely upon the ground that unless it is given the traffic obtained by giving it would go to a competing carrier. A shipper having a choice between competing carriers would only have to refuse to send his goods by one of them unless given exceptional rates to justify that one in making the discrimination in his favor on the ground of the necessity of the situation."

We also refer to the decision of the Commission in the case of *James & Mayer Buggy Co.* v. *Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744. In that case the defendants sought to justify the greater charge for the shorter haul on the ground of the competition of water carriers in connection with delivering rail lines from a different market. On this point the Commission held that:—

"Water competition to *justify* the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation."

The case was brought by complaint. There was no appearance at the hearing first assigned. The defendants subsequently, upon the order of the Commission that the burden was upon them took a little testimony by deposition, and the case was submitted with little or no argument on either side. The ruling and the order to cease and desist from charging more for the shorter than for the longer distance was in accordance with the spirit of the Commission's previous decisions and the only logical outcome of the case. The defendants attempted to justify the greater charge for the shorter distance on the ground of substantially dissimilar circumstances and conditions, but they were not plainly dissimilar, under the construction of the section as laid down by the Commission and approved by the courts. The competition relied upon to constitute the dissimilarity in circumstances and conditions was not only from a different point of shipment but it was the competition by carriers over through routes subject to the Act. What was said in that decision with reference to the competition of markets we now re-affirm. (686, 687). The competitors stood presumably with equal advantage under the law and the exceptional rate could only be sanctioned by an order granted upon investigation which should sustain the carrier's application for relief.

The language of the fourth section presents one very important consideration which should always be kept in view, namely: that which will not amount to a *justification* of the greater charge for the shorter haul under the prohibitory rule of the section may nevertheless *warrant* the Commission in granting a relieving order upon an application for relief under the proviso clause of the section. To stand

upon one's right under the law is one thing, and to obtain relief by process of law is another. Ordinarily the Commission should not alter the standing of parties in proceedings before it. When upon complaint under the 13th section of charges alleged unlawful under the rule of the fourth section, the carrier avers substantial dissimilarity in circumstances and conditions as justifying the greater charge for the shorter distance, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar. But upon an application under the fourth section proviso the carrier is the petitioner, not the respondent; it is not limited by the terms of the rule and may present to the consideration of the Commission every material reason for an order in its favor. And upon investigation of the matter the Commission is not confined to issues made by pleadings, but may, among other things, examine into the legality of rates on competing lines. The Commission may for cause shown on such an application institute on its own motion a collateral proceeding for the purpose of correcting apparently unlawful rates on the competing line, and pending the proceeding grant temporary relief to the petitioning carrier.

But it must not be inferred by this that the Commission will entertain applications for relief based on frivolous grounds. The petition or application must make out in statement a prima facie case of hardship under the rule, and when the competition of another carrier is the cause of an application to charge less for the longer distance, it must appear therein that traffic considerable in amount will be lost to the petitioning carrier if through action of the Commission its situation in regard to such longer distance rate shall not be relieved.

We must dispose of these cases under the above construction of the law. Taking up the cases in the order in which they are treated in the findings the Chattanooga-Atlanta all-rail route, Case No. 317, comes first. In this case where all the competing lines are subject to the Act to Regulate Commerce and the jurisdiction of this Commission as to through shipments from Cincinnati, New York, Philadelphia, Boston and Baltimore, or from any Ohio river or Mississippi river point or any Atlantic port north of Charleston, the defendants had no right to put in the higher rates for the shorter distance upon their own motion, but should have made application to the Commission for relief under the provisory clause of the fourth section, and are technically not now entitled to make defense to this complaint. But a considerable portion of the evidence was devoted to this route and we ought to give the parties the benefit of our comment and conclusions as the facts now stand.

A schedule of rates from Cincinnati to Atlanta which affords a rate per ton per mile varying on the different classes from 1.18 to 4.51 cents cannot be considered too low; on the contrary, if such a rate sheet were challenged it would take strong evidence to overcome the presumption that such rates per ton per mile are unreasonably high. But the unreasonableness of Atlanta rates is not questioned here, these rates being the lower charges for the longer distance with which rates complained of are compared. The distance from Cincinnati to Chattanooga is 336 miles, the first class rate is 76 cents and the rate per ton per mile is about 4½ cents. The distance from Cincinnati to Atlanta is 474 miles, the first class rate is $1.07 and the rate per ton per mile is also about 4½ cents. But the rate per ton per mile from Cincinnati to Marietta, a distance of only 451 miles, is over 5 cents and 6 mills. Marietta takes a first class rate of $1.37 from Cincinnati, being the Chattanooga 76 cent rate and the Western & Atlanta 51 cent local to Marietta. The rate per ton per mile Chattanooga to Marietta is over 8 cents and 7 mills for carrying about 117 miles, over one third the mileage Cincinnati to Chattanooga and nearly one fourth of the total distance from Cincinnati to Marietta. The per ton per mile rate to Marietta is for a fourth part of the carriage nearly double the rate per ton per mile for the other three fourths. There is 31 cents difference between the rates on first class traffic from Cincinnati to Chattanooga and from Cincinnati to Atlanta. On through business from Cincinnati 31 cents would seem to afford a sufficient margin for carrying between Chattanooga and any point on the Western & Atlantic Railroad.

Considering the relative amounts of through and local tonnage of the Western & Atlantic road, it is apparent that the reduction of rates to intermediate points to those in effect at Atlanta would result in but small loss of revenue from traffic shipped at present rates and this would very likely be more than made up by consequent increase in traffic to these points.

Carterville, Kingston and Marietta are reached by other lines than the Western and Atlantic but these lines make no competition with the Western & Atlantic in rates on traffic to these points.

In view of these facts and others shown in the statement of findings we hold that the defendants are not upon the evidence justified in making the greater charges complained of in this case. But this being the first case since the Louisville and Nashville decision in which the Commission has been called upon to specifically hold that relieving orders must be ap-

plied for in this class of cases, we think the carriers should have an opportunity in this case of applying for relief under the proviso of the 4th section, and, if possible, of bringing forward voluntarily as applicants, instead of defendants, additional evidence that may be admissible under such a proceeding, as indicated in this opinion. The order will therefore be that the defendants in this case cease and desist, within 20 days after receiving a copy thereof, from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati or other points called and known as Ohio river points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth or Marietta than for the longer distance over the same line in the same direction to Atlanta, the shorter being included within the longer distance, or, that the defendants, make and file with the Commission within the time above specified an application or applications as the case may require, as provided in the proviso of the fourth section of the Act to Regulate Commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio river points to the shorter distance points above mentioned than for such transportation over the same line in the same direction for the longer distance to Atlanta, and show cause within 60 days after service of the order why such application for relief should be granted; and upon such application the evidence already taken in this case may be used. In case the application for relief shall be denied the order to cease and desist shall stand, and compliance therewith will be required within twenty days after service of the order denying the application.

The next case is the Augusta-Atlanta part water route, case No. 314. Atlanta is the longer distance point in this case as in the case just decided, and the competing lines for through transportation from New York, Philadelphia, Boston, Baltimore, Cincinnati, etc., are also the same as in that case. This route is through Charleston and there is a competing route by the Ocean Steamship Company and Central Railroad of Georgia through Savannah and Macon to Atlanta; the distance being for all practical purposes about the same over either route. The transportation by the route through Savannah is composed of a water line and a line of railroad wholly in Georgia, but we shall not now undertake to discuss what effect an attempt of the water and state lines to make low individual rates and act independently of each other as to billing and shipment or carriage, might have upon traffic routed through Charleston. We are dealing with existing facts, and transportation over both routes is now through, and as to such transportation the carriers over both routes are subject to the Act. The East Tennessee and the Savannah, Florida & Western connecting at Jessup, Ga., also run from Savannah, Ga., through Macon, and the East Tennessee has its own line from Brunswick to Atlanta. High per ton per mile rates are produced by the locals of the Georgia Railroad and these rates, by being made part of through charges between interstate points, cause very considerable increase in rates per ton per mile for the whole route to intermediate points as compared with the rate per ton per mile produced by agreed through rates to the terminals. We are led to believe and hold upon the facts now before us that through charges over the route to the intermediate or shorter distance points are unlawful. For the reasons expressed in regard to the preceding case we shall direct the defendants to charge no more to the shorter distance points than to Atlanta, the longer distance station, or apply for relief and show cause thereon in the manner and within the time stated in the foregoing order in case No. 317. Before closing the discussion as to this case we desire to call attention to an admission by the defense in this case, namely, that Madison one of the shorter distance points would under the present method of defendants in fixing rates soon be likely to receive considerably reduced rates on account of the competition to that point through Macon situate on the Savannah route. A line extends from Macon up through Madison to Lula on the Richmond & Danville line. Madison and Social Circle both shorter distance points on the Georgia road are but 6 miles apart, and the present rates to Madison and Social Circle over this route are substantially the same. Social Circle is also connected with the Richmond & Danville road by a line to Gainesville. The apparently favorable situation of these two places in respect to transportation facilities is worthy of note.

The case numbered 325, and called the Atlanta & West Point all-rail route from Cincinnati and other Ohio river points is next in order. We do not think this case comes within the rule of the fourth section. It is conceded by the complaint and the fact appears in evidence that water competition exists to Montgomery by the Alabama river. Opelika the other longer distance point is benefited by rates lower than it would receive were it not for the influence of competition at Montgomery; and West Point is also favored thereby though in less degree. But the inherent defect in the complaint is that the transportation is not over *the same line* in *the same direction* to both the shorter and longer distance points.

The shorter is not included within the longer distance. Traffic for Montgomery and Opelika and even West Point routed by the Louisville & Nashville, one of the initial defendants, goes over a wholly different route, and as to the Cincinnati, New Orleans & Texas Pacific, another initial defendant, while the evidence is not clear upon the point, still the length of its line leads us to believe that in handling Cincinnati traffic for Montgomery and Opelika, it carries such traffic first to Birmingham and forwards to Montgomery and Opelika by connecting lines from that point. Freight from Ohio river points below Henderson may possibly go through Atlanta, but the principal point of shipment to which our attention was directed by the evidence is Cincinnati. The complaint in this case must be dismissed.

In Case No. 315, the Macon-Georgetown-Columbus Part Water Route, the lines are the Ocean Steamship Co. and the Central Railroad of Georgia, which transport the traffic from New York and other north Atlantic ports through the port of Savannah to Columbus, a longer distance point, and Everett, Butler, Geneva and Schatulga, shorter distance points on the same line, and also to Georgetown, a longer distance point, and Smithville, Dawson and Cuthbert, shorter distance points on the same line. These destination points are on the southwestern division of the Central system, beginning at Macon and ending by one branch at Columbus and by another at Georgetown or Eufaula on the opposite bank of the Chattahoochee river. Columbus is also on that river. The defense claims that water competition exists at Columbus and Georgetown, the latter being about a mile east of the river, by a route which is water New York to Jacksonville, rail from Jacksonville to Chattahoochee River Junction, and steamboat up that river to Columbus and Georgetown, but admits that under present rates the Chattahoochee competition is not an element to be feared. It is also in evidence that the channel of the Chattahoochee would need to be improved before it could be extensively employed for vessels of considerable draught; but how much improvement would be necessary was not shown. This route controls the rates to the points mentioned except as they may be influenced by the river line.

There is much less disparity in rates to the shorter and longer distance points upon this route than those in effect to such points on any of the other routes named in these complaints. The highest first class rate is $1.31 and the lowest is $1.14, making 17 cents difference between the first class rates to Columbus or to any shorter distance station. The rates to each point are straight rates and not the addition of rates to and from a basing point. It is apparent to us that an intelligent effort has been made to keep the disproportion in long and short haul rates down to a low degree, and upon a plan of making rates direct to the point of destination, and it is possible if not probable that the application of proper regulation to other lines in this territory may enable the carriers upon this route to strictly comply with the general rule, or at least further reduce the difference between charges for the longer and shorter distances.

But we are not assured by the evidence that water competition by the Chattahoochee river is a seriously threatening and potential factor in rate making at this time, or that if in effect it would not be over a route wholly or partially subject to our jurisdiction, and as competition with other lines subject to the Act is also in this case we think the proper and consistent course is found in the issuance of an alternative order like the one directed in cases 317 and 314, and such an order will be prepared.

The next case in order is the Atlanta-Macon all-rail route from Cincinnati. Here the Central of Georgia is again the terminal road. Macon is the longer distance point and Jonesboro, Hampton, Griffin, Barnesville and Forsyth are the shorter distance points. Macon and Atlanta, the two terminals of this the Atlanta division of the Central system, take substantially the same rates from Cincinnati. The rates to the intermediate stations are highest to the points about equi-distant between the terminals and rates on the higher classes are based on the terminal which gives the most favorable combination rate; but the lower class rates are as a rule not arrived at by adding established locals to basing point charges. The rate per ton per mile Cincinnati to Griffin, one of the shorter distance points, is 5¼ cents on the first class rate of $1.39, and the rate per ton per mile on the class D rate of 32 cents, the lowest class, is 1 cent and 2 mills. The Macon first class rate of $1.07 is about 3 cents and 6 mills per ton per mile and the class D rate of 29 cents is about 1 cent per ton per mile. We do not hesitate to say, as a general proposition that a rate per ton per mile of 5¼ cents on any class of goods for a distance of over 500 miles, as is in effect to Griffin, is apparently unreasonable; neither is a rate per ton per mile of 3 cents and 6 mills for nearly 600 miles, such as Macon has, apparently too low. We think the latter rate is in itself evidence of being profitable, and that the amount of the former leads directly towards a belief in its being extortionate. But rates generally in southeastern territory range higher than in other sections of the country, the evidence adduced at the hearing on the question of reasonableness was meagre, and we are no more prepared to say in this than in the other cases that the defendants are unable to rebut the presumption of unreasonableness which is raised by an examination of the rates alone. On this route from

Cincinnati to Atlanta the East Tennessee carries only between Chattanooga and Atlanta, but the East Tennessee runs on through Atlanta to and beyond Macon to the sea at Brunswick. It also connects at Jessup with the Savannah, Florida & Western for Savannah. The distance from Cincinnati to Macon by the East Tennessee route is 576 miles as compared with the distance by the route in this case of 591 miles, but the short route Cincinnati to Macon is formed by the Cincinnati, New Orleans & Texas Pacific to Chattanooga; the Western & Atlantic to Atlanta, and East Tennessee to Macon; distance 562 miles. The mileage *from* the sea to Macon is 192 miles by the Central of Georgia from Savannah, and about 200 miles by the Savannah & Western and East Tennessee from Savannah. The distance by the East Tennessee from Brunswick to Macon is about 190 miles. So that the mileage between Macon and the sea at the two ports named is about the same by either of the roads. The rates to Macon from New York or Baltimore, water and rail, and from Cincinnati, all rail, have but little variation. Macon rates all rail or water and rail appear to meet on a nearly common basis. The Atlanta rates have been herein referred to and commented upon in other cases. Traffic to both the shorter and longer distance points in this case is only carried over lines which are subject to regulation at our hands. We therefore direct that the like order be issued in this case as was directed to be entered in the Chattanooga-Atlanta case No. 317.

We next consider case number 326, the Atlanta & West Point, part water route through Charleston from New York and other northern ports to Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance points, and Opelika, the longer distance point. All of these stations are located on the Atlanta & West Point road except Opelika which is upon the Western of Alabama line. As shown by the findings applicable to this route, water and rail lines through Savannah and Brunswick can reach all the shorter distance points through Opelika, the longer distance point, except Newnan, over a shorter rail mileage than by this route from Charleston. The water lines to Savannah and Brunswick do not touch at Charleston and the difference in distance by water from New York and other points to Charleston, Savannah or Brunswick is in view of the low cost of water carriage too inconsiderable to affect the merits of the case. The actual routing of the freight over these competing routes, which also reach Atlanta, and, one of them, Newnan, by direct lines from the seaboard, is not shown, they not being parties to the case. We assume that it would be for the advantage of the Central road taking freight from steamer at Savannah for West Point or even La Grange to route it through Opelika the longer distance point in this case, for its carrying distance would be longer than by delivering at Atlanta or Newnan. But traffic to the shorter and longer distance points does go over the route in this case, the Charleston route, and it is therefore within the rule of the fourth section and different from case 325 which we have dismissed. All the competing lines are subject to the provisions of the Act to Regulate Commerce and while under present rates of shorter lines to Opelika, West Point, &c., there may and doubtless do appear to the carriers composing the route under consideration reasons which they as carriers can but regard as forceful and controlling as to traffic and revenue, yet an application for relief by the carriers interested in present rates on traffic over this route, supported by such evidence and argument as the carriers' interest will lead them to present, and coupled with like investigation of the rates on the competing lines, may change the whole situation by bringing or retaining proper rates into effect and at the same time preserving all the just rights of each carrier and insuring equity and justice to the shippers and localities concerned. An alternative order as above outlined will likewise be entered in this case.

The Atlanta & West Point Fertilizer Route from Charleston, Case No. 324, is over the same railroads that form part of the last mentioned route from New York, to Newnan and other points. The fertilizer rates from Charleston are made in competition with rates from Savannah, and to the shorter distance points set forth in the complaint and findings the transportation from Savannah may be wholly within the State of Georgia. The rail lines from Savannah and Brunswick can also reach the shorter distance points through Opelika with fertilizers as they do with class freights mentioned under the Atlanta & West Point Part-Water Route. Fertilizers are low grade freight brought mostly, it is believed, in cheap bottoms to Atlantic ports. Rates on shipments of fertilizers from Savannah to Newnan, Grantsville, Hogansville, La Grange and West Point are exclusively subject to regulation by the complaining Georgia Commission, when the transportation is all in Georgia, and the Charleston dealer in fertilizers must meet the Savannah man by reducing prices if he cannot obtain from the Charleston route rates equally as low as those fixed by the Georgia Commission from Savannah. It seems to us that the remedy for the correction of rates on shorter hauls when competing rail shipments originate at seaports, one in and the other out of Georgia, is with the Commission of that State which is also the complainant herein. We might shut our eyes to this fact by holding that the competition is not from the same

point of departure, but considering the power and office of the complainant, we believe such a ruling would be founded more on sentiment than fact, and not be warranted by the slight evidence in this case.

This case does not fall because of the competition of the Savannah and Charleston fertilizer markets for trade at the destination points named in the complaint. If free market competition were the only factor in the case, we should decide adversely to the defendant's claim of justification. But the rates from Savannah to all the shorter distance points are not only not subject to investigation by this Commission, but are subject to the authority vested by the State of Georgia in the Railroad Commission of that State, the complainant in this case, and such complainant has, as shown in the 33d finding, made a general ruling, the stated intention of which is to give the railroads in Georgia "the largest liberty in fostering the industries of the State" in order "that our own roads and seaports may be able to compete with roads and seaports without the State." We have here the anomalous case of a State Board authorizing a carrier subject to its supervision to enter unrestrainedly into competition as to rates from a seaport in Georgia with interstate carriers from a neighboring seaport without the State of Georgia, and yet complaining against the interstate carriers that they violate the same long and short haul principle which it authorizes the state carriers to disregard. While the rule and explanation set forth in the 33d finding are kept in effect by the Georgia Railroad Commission, we do not think a complaint by it of rates from a southeastern seaport outside of Georgia to points in Georgia, reached also by rail lines from a seaport in that state, should be sustained.

Orders in the several cases will be made in accordance with the conclusions above stated. In this report and opinion all the Commissioners concur.

NOTE.—Since this opinion was written, the Osborne case, cited upon page 31, has been reviewed in the Circuit Court of Appeals, and the judgment of the court below was reversed, but there is nothing in the opinion of *Mr. Justice* Brewer which disapproves the principles laid down by *Judge* Shiras in his charge to the jury, so far as quoted in this opinion; nor was anything said in the opinion of the appellate court in the Osborne case, necessary to the decision therein, in conflict with any views above expressed.

71 EXHIBIT I.

72 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of November, A. D. 1892.

Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, Commissioners.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the railroad commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, THE Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway and The Cincinnati Southern Railway Company. } No. 317.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved in this proceeding having been had, and the Commission having on the date hereof made and filed a report and opinion containing its findings of fact and conclusions thereon, said report and opinion is hereby referred to and made a part of this order; and the Commission having, as appears by said report and opinion, found and decided, among other things, that the defendants herein are not justified under the fourth section of the act to regulate commerce in charging or receiving more in the aggregate for the transportation of a like kind of property from Cincinnati and other Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance from Cincinnati and other Ohio River points, over the same line in the same direction, to Atlanta, in the State of Georgia,

It is ordered and adjudged, that the defendants, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, individually, and as lessee of and operating the Western and Atlantic Railroad, and the Cincinnati, New Orleans and Texas Pacific Railway Company, individually, or as lessee of and operating the Cincinnati Southern Railway, do wholly cease and desist, within twenty days after service of a copy of this order, from charging or

73 receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance over the same line in the same direction to Atlanta, in the State of Georgia, the shorter being included within the longer distance; or, that said defendants do, within the time above specified, make and file with this Commission an application or applications, as may be required and as provided in the proviso clause of the fourth section of the act to regulate commerce, for relief

from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio River points to the shorter distance points aforesaid than for such transportation over the same line in the same direction for the longer distance to Atlanta, aforesaid, and show cause within 60 days after service of a copy of this order why such application, or applications, for relief should be granted; and upon such application or applications the evidence already taken herein may be used. In case said defendants elect to apply for relief as hereby provided, and such application for relief, after investigation by the Commission, be denied, then the order to cease and desist as hereinabove set forth shall stand, and said defendants will be required to comply therewith within 20 days after service of the order denying said application.

It is further ordered that a notice embodying this order be forthwith sent to each of the defendants in this proceeding, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, nine in number, and marked A to I, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 16th day of May, 1893.

[L. S.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

75 In the circuit court of the United States, northern district of Georgia, March term, 1893.

INTERSTATE COMMERCE COMMISSION
versus
THE WESTERN & ATLANTIC RAILROD COMPANY; THE Louisville & Nashville Railroad Company; the Nashville, Chattanooga & St. Louis Railway Company; the Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway; the Cincinnati Southern Railway and S. M. Felton, receiver. } No. 524.

Petition under interstate commerce act. Order of notice to defendants. In equity.

These proceedings having been filed under an act to regulate commerce, approved February 4, 1887, as amended March 2, 1889, February 10, 1891, and February 11, 1893.

It is ordered and directed by the court that the defendant corporations appear before the United States circuit court for the northern district of Georgia, at the court room in Atlanta, Georgia, on the 10th day of July, 1893, at 10 o'clock a. m., to answer such proceedings and to show cause why the prayer of petition should not be granted; and it is further ordered that a copy of this order be served on the Western & Atlantic Railroad Company by serving Joseph E. Brown, president and receiver of said Western & Atlantic Railroad Company, and that the nonresident defendant corporations be served by the clerk of this court mailing a copy of this order in a registered letter, addressed to the president or chief officer at the principal office of such corporation set out in said petition and such corporations as are in the hands of a receiver, in the same manner, or service may be acknowledged by counsel representing said defendants; and it being represented to the court that copies of the petition or bill are printed and convenient (without holding the same to be necessary and proper notice under act above referred to), the clerk is directed to attach a copy of said petition or bill to each of said orders or notices and let them be served therewith.

In open court this June 19th, 1893.

WM. T. NEWMAN,
U. S. Judge.

76 *Service.*

I hereby certify that I have this 20 day of June, 1893, mailed a certified copy of this order and a copy of the petition in this case in registered letters addressed to each of the following persons, to wit: To the president or chief officer of the Louisville & Nashville Railroad Co., Louisville, Ky. To the president or chief officer of the Nash'l, Chatt. & St. Louis Ry. Co., Nashville, Tenn. To the president or chief officer of the Cin., N. O. & T. P. Ry. Co., Cincinnati, O. To the president or chief officer of the Cincinnati Railway Co., Cincinnati, O., and to S. M. Felton, receiver of Cin., N. O. & T. P. Ry. Co., Cincinnati, O.

O. C. FULLER,
Clerk U. S. Circuit Court.

Personally served a copy of the within writ on Joseph E. Brown, president and receiver of said Western & Atlantic Railroad Company, at Atlanta, Fulton Co., Georgia, on June 20, 1893.

A. E. BUCK, *U. S. M.*,
By O. E. MITCHELL, *Deputy.*

Personally served a copy of the within writ on Nashville, Chattanooga & St. Louis Ry. Company by personally serving a copy on L. L. McCollum, Supt., at Atlanta, Ga., on July 6th, 1893.

S. C. DUNLAP, *U. S. M.*,
By O. E. MITCHELL, *U. S. D. M.*

Filing: Filed in clerk's office 27 day of May, 1893. O. C. Fuller, clerk.

Order allowing defendants thirty days to answer.

In the circuit court of the United States, northern district of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
W. & A. RAILROAD COMPANY, LOUISVILLE & NASHVILLE R. R. Co., et al.
No. 524.

By consent of parties it is ordered, in the above stated case, that the defendants, and each of them therein named, be, and they are
77 hereby, allowed thirty days from this date to answer all proceedings in the above-stated case, with all of the rights of pleading to said petitions now enjoyed by said defendants.

It is further ordered that the judge of this court may, during vacation, by order direct the method in which testimony may be taken therein and appoint an examiner or other officer to take such testimony.

In open court this 10th day of July, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 10 day of July, 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy.

Answer of C., N. O. & T. P. Ry. Co.

In the circuit court of the United States, northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY, THE Louisville & Nashville Railroad Co., The Nashville, Chattanooga & St. Louis Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, lessees of the Cincinnati Southern Railway Company, The Cincinnati Southern Railway Company, and S. M. Felton, receiver.

Answer of the Cincinnati, New Orleans & Texas Pacific Railway Company and of S. M. Felton, receiver thereof.

Now come the Cincinnati, New Orleans & Texas Pacific Railway Company and S. M. Felton, receiver thereof, and reserving unto themselves the benefit and advantage of exceptions to the many errors and insufficiencies in said petition contained, answer and say:

They admit that the Cincinnati, New Orleans & Texas Pacific Railway Company is and was at the time stated in petition a corporation under the laws of the State of Ohio, having its principal office at Cincinnati, in said State, and that the defendant, S. M. Felton, is receiver thereof by appointment of the circuit court of the United States for the southern district of Ohio, made March 18th, 1893, in case of Samuel Thomas vs. The Cincinnati, New Orleans & Texas Pacific Railway Company.

78 These defendants further admit that at the several times mentioned in the said petition the Cincinnati, New Orleans & Texas

Pacific Railway Company was a common carrier engaged in the transportation of persons and property, and that its road extends from Cincinnati, in the State of Ohio, to Chattanooga, in the State of Tennessee, a distance of 336 miles, said road being known as the Cincinnati Southern Railway, whereof said The Cincinnati, New Orleans & Texas Pacific Railway Company is lessee.

Defendants deny that they were or are engaged in the transportation of persons and property under any common control, management, or arrangement for continuous carriage or shipment with codefendants in this case or any of them.

Defendants admit that they receive and transport over said railway shipments of merchandise from points on the Cincinnati, New Orleans & Texas Pacific Railway destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta in the State of Georgia, at the rates named in said petition, but they deny that said transportation was under a common control, management, or arrangement with the codefendants.

These defendants admit that the defendants named in this case other than S. M. Felton, receiver, were on the 22nd day of October, 1891, impleaded in a controversy not requiring trial by jury as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon a petition of certain persons composing the railroad commission of Georgia, for an alleged violation of the act entitled an act to regulate commerce, and that Exhibit A attached to the petition here is a copy of the complaint then and there made.

These defendants further admit that on the 18th day of January, 1892, said The Cincinnati, New Orleans & Texas Pacific Railway Company filed its answer to the petition before the Interstate Commerce Commission and that Exhibit E attached to the petition herein is a true copy of said answer.

These defendants also admit that on the 11th day of November, 1892, said Interstate Commerce Commission made a report in writing in said cause, which included the finding and the facts upon which the conclusions of the Commission were based and that copy of the same is attached to the petition herein as Exhibit H.

They also admit that said Interstate Commerce Commission made an order and notice in relation to the matter and that a copy of the same is annexed to the petition herein, marked "Exhibit I."

These defendants further admit that a copy of said report and order and notice aforesaid were delivered to the defendants named
79 in said petition before the Interstate Commerce Commission.

These defendants deny that the report and findings of said Interstate Commerce Commission and its said order based thereon were lawful, and deny that there has been any violation of the act regulating commerce on the part of these defendants in the respects named in the petition herein or in the said petition before the Interstate Commerce Commission.

And these defendants deny each and every allegation of said petition not herein specifically denied or herein specifically admitted.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, and S. M. FELTON, *Receiver*,
By EDWARD COLSTON, *Atty.*

STATE OF OHIO,
Hamilton County, ss:

Edward Colston, being by me first duly sworn, says that he is general counsel of the Cincinnati, New Orleans & Texas Pacific Railway Company, one of the defendants herein, and that the allegations of the foregoing answer are true as he verily believes.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 7 day of July, 1893.

[SEAL N. P.] OSCAR STOEHR,
Notary Public, Hamilton County, Ohio.

Filing: Filed in clerk's office this 13th day of July, 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Answer of W. & A. R. R. Co.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } Number 524, in equity.

80 The Western & Atlantic Railroad Company, one of the defendants in the above-stated case, reserving all rights to demurrer or objections to the foregoing petition, answering the same, saith:

That it is a corporation created, chartered, and having its principal office in the State of Georgia, as alleged in said petition.

Defendant denies that it was at the time of the acts specially mentioned or is now a common carrier under a common control, management, or arrangement for continuous carriage or shipment with defendants in this case or any of them, and calls for strict proof of same.

Defendant denies that is was or is now a party to any through rates from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia, under a common control, management, or arrangement with the codefendants.

This defendant admits that the defendants were on the 22nd day of October, 1891, impleaded in a controversy not requiring a trial by jury, as provided in the 7th amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon the petition of the railroad commission of Georgia for an alleged violation of the act entitled "An act to regulate commerce," and the Exhibit A attached to the petition herein is a copy of the complaint then and there made.

This defendant further admits that on the 23rd day of November, 1891, it filed its answer to said petition, and that Exhibit D attached to the petition herein is a true copy of said answer.

Defendant also admits that on the 11th day of November, 1892, said Interstate Commerce Commission made a report in writing in said cause,

and that a copy of the same is attached to the petition herein marked "Exhibit H."

Defendant denies that at said hearing it was made to appear that the said defendants had violated the provisions of the act entitled "An act to regulate commerce," in any respect, but saith on the trial it was made to appear that said defendants had not violated the provisions of said act.

Defendant denies that said Commission duly and legally determined the matters and things in controversy and at issue between said parties, but on the contrary saith that the said Commission erroneously determined the matters and things in controversy and at issue between the said parties.

Defendant denies that the findings of facts made by the said Commission are correct, but saith that the said findings of fact made by the said Commission in the report alluded to are incorrect and unwarranted by the evidence produced before said Commission and by the facts of said case.

This defendant further answering, saith that the order Exhibit
81 I, referred to in said petition, is not based upon the evidence in said case and the law applicable to said evidence, but that the same is contrary both to the law and evidence, and should not have been made by said Commission.

This defendant denies that it has violated any provision of the Interstate Commerce Law, as stated in said report and order of the said Commission, but saith it has observed all of the provisions of the Interstate Commerce Law.

This defendant denies that the rates charged by it as specified in said Exhibit "A" to said petition are unreasonable or discriminative in their nature, but saith that the same are reasonable and do not discriminate and are not in violation directly or indirectly of section 4 of the act of Congress entitled An act to regulate commerce.

This defendant denies that the transportation of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta is made under similar circumstances and conditions with the transportation of like property to Atlanta, and calls for strict proof thereof and is ready to prove to the contrary.

This defendant denies that in any of the matters set forth or complained of in the said petition of the said Interstate Commerce Commission, or the exhibits thereto, that it has charged or received any greater compensation in the aggregate for the transportation of like kind of property and under substantially similar circumstances or conditions for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance as charged in said petition, and demands that strict proof be required of this charge and is ready to prove to the contrary.

And now having fully answered, defendant asks to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

THE WESTERN & ATLANTIC RAILROAD COMPANY,
By PAYNE & TYE, *Attys.*

STATE OF GEORGIA, *County of Fulton:*

Joseph M. Brown, being duly sworn, says that he is traffic manager of Western & Atlantic Railroad Company, one of the defendants in this

proceeding, and that the foregoing answer is true, as he thoroughly believes.

JOSEPH M. BROWN,
Traffic Manager Western & Atlantic R. R. Co.

Sworn to and subscribed before me this August third, 1893.

[Seal of N. P.] J. H. STERCHI, *N. P.*

Filing: Filed in clerk's office 9 day of Aug. 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

82 *Answer of the N., C. & St. L. Ry.*

The answer of the Nashville, Chattanooga & St. Louis Railway to the bill of complaint filed in the circuit court of the United States for the northern district of Georgia, it being No. 524 on the equity docket in the case of the Interstate Commerce Commission vs. The Western & Atlantic Railroad Company et al., to which it is made a defendant.

I. Respondent for answer says that it is the sole lessee of the Western & Atlantic Railroad Company, and is now operating the same.

Respondent supposes it to be true that the Louisville & Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the State of Kentucky.

Respondent admits that it (respondent) is a corporation created, chartered, and existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Nashville, in the State of Tennessee. It has never been incorporated in Georgia, Alabama, or Kentucky.

Respondent supposes it to be true that the Cincinnati, New Orleans and Texas and Pacific Railway is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio, and that the defendant, S. M. Felton, is the receiver thereof.

Respondent supposes it to be true that the Cincinnati Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio.

Respondent admits that the defendants named in the petition filed in this case were on the 16th day of October, 1891, and still are common carriers engaged in the transportation of persons and property through several of the States of the Union, and principally were they engaged in the said business from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Ackworth, Marietta, and Atlanta, in the State of Georgia.

Respondent denies that there was on the 16th or 22nd day of October, 1891, or is now, any common control, management, or arrangement between this respondent and any of its codefendants for the continuous carriage or shipment by its or their railroads. As to whether any such common control, management, or arrangement existed between any of the other defendants to the petition, respondent has no knowledge, information, of belief.

83 II. Respondent admits that on or about the 22nd day of October, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, purporting to constitute and compose the Railroad Commission of Georgia, filed a petition before the Interstate Commerce for an alleged violation on the part of said defendants of the provisions of the act to regulate commerce, and that Exhibit "A" to the petition filed in this case is a true copy of said petition; and respondent admits that a true copy of said petition was forwarded to respondent; and respondent supposes it to be true that copies of said petition were forwarded to each of the other defendants herein named. As to whether, however, said commissioners named above were duly qualified and constituted the Railroad Commission of Georgia, this respondent has no knowledge.

III. Respondent supposes it to be true that Exhibits B, C, D, E, F, and G to the petition filed in this case are true copies of the answers of the respective defendants, as alleged in the petition filed in the case.

IV. Respondent admits that it appeared before the Interstate Commerce Commission at Atlanta, Georgia, on the 24th day of March, 1892, and that some of its codefendants also appeared; but whether all of the defendants who are stated in the petition filed in this case as having appeared on that occasion did appear, respondent has no knowledge, information, or belief, nor has it any knowledge or information as to whether said other defendants had any notice that there would be any hearing of the controversy at Atlanta as aforesaid on that day.

V. Respondent denies that it was made to appear to the satisfaction of said Commission at said alleged hearing, or at any other time, that this respondent had violated any of the provisions of the act to regulate commerce in any respect whatever, either as alleged in the original petition or otherwise.

Respondent further denies that it has violated any of the provisions of said act, as it will prove at the hearing of this case.

Respondent denies that said Commission duly or legally determined the matters or things that were in controversy or at issue between said parties; on the contrary, respondent is advised, and so insists, that such determination of said matters and things as was made by said Commission was illegal.

Respondent admits that said Commission made a report in writing in respect to said matters and things, and that Exhibit "H" to the petition filed in this case is a true copy of said report; which report
84 included the finding of facts upon which the conclusion of said Commission is based, but denies said report or finding of facts were warranted by the facts of the case.

Respondent denies that said Commission duly formulated any order or notice in relation to the matters or things stated or charged in said original petition.

Respondent denies that such order or notice as was made or issued by said Commission with respect to said matters or things was in accordance with or agreeable to the requirements of the statutes in such cases made and provided.

Respondent denies that said order now remains in full force or effect, or that it was ever in force or effect.

Respondent supposes it to be true that said order has never been

vacated, set aside, modified, or changed in any respect whatever, and it admits that Exhibit "I" to the petition filed in this case is a true copy of said order; but respondent is advised and insists that said order and said notice are illegal and not authorized by the act to regulate commerce.

Respondent admits that said Commission caused a properly authenticated copy of its said report, together with said order and notice aforesaid, to be delivered to respondent.

VI. Respondent denies that it has ever violated any of the provisions of the act to regulate commerce.

Respondent denies that it has at any time been unmindful of its duty, or of any lawful decision or determination of said Commission; or that it has ever disregarded or set at naught any lawful order or authority of said Commission; or that it has ever wilfully or knowingly or at all violated or disobeyed any lawful order of said Commission.

VII. Respondent admits that it is true that the rates of freight charged, collected, and received by respondent, the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad, and the Western & Atlantic Railroad Company, for freight transported by continuous carriage from the city of Cincinnati and other Ohio River points to the stations mentioned in the petition are higher and greater on each class mentioned in the petition than the amount charged and received on freight to Atlanta, Ga., which is a greater distance from the city of Cincinnati and other Ohio River points, notwithstanding the fact that there is no direct water competition in the city of Atlanta, but there is railway competition at Atlanta from other lines, which is just as effective as water competition, and some of those lines are not subject to the control of the Interstate Commerce Commission.

85 VIII. Respondent denies, however, that the rates of freight in which this respondent participates as aforesaid are unreasonable and discriminating in their nature. On the contrary, respondent avers that they are fair, reasonable, and equal and open to every one, and that they do not unjustly discriminate against any person or place.

IX. Respondent denies that the transportation of property from said Ohio River points to Atlanta, Georgia, is or has been conducted under substantially similar circumstances and conditions as the transportation of like property from said Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta. On the contrary, respondent avers that the transportation of like kind of freight between said Ohio River points and Atlanta is done under entirely different circumstances and conditions from those affecting the transportation from said Ohio River points to the stations mentioned in the petition.

X. Respondent further shows unto your honor that from Cincinnati and the other Ohio River points to Atlanta, Ga., there are various all rail lines, and part rail and a part water line.

Business from Cincinnati, Louisville, Evansville, Cairo, and other Ohio River points, to stations on the Western & Atlantic Railroad might move through Birmingham and Atlanta. From Evansville, Paducah, Cairo, and Memphis it does.

In such cases Calhoun and the stations on the W. & A. R. R. are not intermediate points with Atlanta.

The Western & Atlantic Railroad does not unite in any joint arrange-

ment for making through rates, or for dividing by established per cents, in business coming over this line. It maintains the same position with reference to its Atlanta connections as it does with its Chattanooga connections, namely, demanding its full local tariff rates on all such traffic from either Atlanta or Chattanooga to any local station on its line.

While there is a "line," therefore, within the meaning of the decision in the Social Circle case, from Cincinnati, Louisville, et al., to Atlanta through Chattanooga, there is no such "line" from the same places to Calhoun and other local points on the Western & Atlantic Railroad.

XI. Respondent further desires to call attention to the so-called fact, as reported by the Interstate Commerce Commission, to the effect that the net income of the Western & Atlantic Railroad for the year 1890 was $237,329.71. As a natural fact the net earnings for that year were only $198,000.00, and even this large showing is due to the fact
86 that the lessees allowed the tracks, bridges, and equipments to run down. Had the proper repairs and improvements been made, there would have been no net earnings above the rental, but more probably a deficit. This respondent was compelled to expend over $600,000.00 in placing said road in a safe condition when it took charge of it in 1891.

XII. Respondent further avers that the rates actually charged by it and its connecting lines from said Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are just and reasonable in themselves, and that the rates to Atlanta, Ga., in view of the fact of the active competition at that point, are also just and equitable in themselves, and that said rates to Atlanta do not constitute any unjust discrimination or undue preference in favor of Atlanta as against Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Ga.

Having fully answered, respondent prays to be dismissed with reasonable costs.

[SEAL OF N. C. & ST. L. RY.]

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
By J. W. THOMAS, *President.*
O. H. AMBROSE, *Sec'y.*

STATE OF TENNESSEE, *Davidson County:*

Personally appeared before me, Charles E. Curry, a notary public duly appointed and qualified in and for said county and State aforesaid, J. W. Thomas, president of the Nashville, Chattanooga & St. Louis Railway, the above-named respondent, and signed the aforesaid answer, and affixed the seal of the said corporation thereto as the answer of said corporation, and swears that the facts contained therein are true to the best of his knowledge, information, and belief.

In witness whereof I have hereunto signed my name and affixed my notarial seal at office at Nashville, Tennessee, this the 7th day of August, 1893.

[SEAL OF N. P.]

CHARLES E. CURRY,
Notary Public.
J. D. B. DUBOW, *Att'y.*

Filing: Filed in clerk's office 9 day of Aug., 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Answer of the L. & N. R. R. Co.

The answer of the Louisville & Nashville Railroad Company
87 to the petition filed by the Interstate Commerce Commission against The Western & Atlantic Railroad Company, this respondent, The Nashville, Chattanooga & St. Louis Railway Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, the Cincinnati Southern Railway Company, and S. M. Felton, receiver, in the circuit court of the United States for the northern district of Georgia, in equity No. 524 on the rule docket of said court.

I. Respondent admits that the Western & Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Atlanta, in said State; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, and that it has its principal office at Louisville, in said State; that the Nashville, Chattanooga & St. Louis Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, and that it has its principal office at Nashville, in the State of Tennessee; that the Cincinnati, New Orleans & Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, in said State; and that the defendant, S. M. Felton, is the receiver thereof; that the Cincinnati . . . . . Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, in said State.

II. Respondent admits that the defendants were on October 16th, 1891, and still are, respectively, common carriers, engaged in the transportation of persons and property by railroad over their respective roads, which roads extend through several of the United States; that they were on October 16th, 1891, and now are engaged in such business over their respective roads from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia.

III. The Louisville and Nashville Railroad Company owns a bare majority of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, and the Nashville, Chattanooga & St. Louis Railway Company leases from the State of Georgia and operates the Western & Atlantic Railroad; but the Louisville & Nashville Railroad Company does not operate or control the operation of either the Nashville, Chattanooga & St. Louis Railway or the Western & Atlantic Railroad; nor
is the Louisville and Nashville Railroad Company under any
88 common control or management with the Nashville, Chattanooga & St. Louis Railway Company, each of said companies being controlled, operated, and managed by separate and distinct officers, agents, and servants. Neither is respondent under any common control, management, or arrangement with any of the defendants for a continuous

carriage or shipment of persons or property, except that the Louisville & Nashville Railroad Company receives shipment of freight at Cincinnati destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Georgia, for which it issues its own true bills of lading, which bills of lading are protected by the Nashville, Chattanooga & St. Louis Railway Co. individually and as lessee of the Western & Atlantic Railroad. When said shipments are made through from Cincinnati to Atlanta they are carried at certain agreed through rates, and certain proportions of said through rates are accepted by the Nashville, Chattanooga & St. Louis Railway Company individually as its compensation for carrying such shipments from Nashville to Chattanooga; and certain other proportions of said through rates are accepted by said company as lessee of said Western & Atlantic Railroad as its compensation for carrying such shipments from Chattanooga to Atlanta. But the Nashville, Chattanooga & St. Louis Railway Company, as lessee of the Western and Atlantic Railroad, has at all times declined to form through routes or to make through rates to or from the local stations of the Western & Atlantic Railroad.

IV. Respondent denies that the defendants were duly impleaded in any kind of a controversy before the Interstate Commerce Commission on October 22nd, 1891, though it is true that on or about October 16th, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the railroad commission of Georgia, filed a petition before the Interstate Commerce Commission, a correct copy of which petition is filed as Exhibit "A" to the petition filed in this case. Whether said railroad commission of the State of Georgia has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, respondent prefers that said laws shall speak for themselves.

V. Respondent admits that a copy of said petition, duly attested by the secretary of said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Commission to respondent; and it supposes that similar copies were duly forwarded to each of the other defendants.

VI. Respondent admits that on or about the 9th day of November,
89 1891, respondent filed its answer to said petition before said Commission, and that Exhibit "B" to the petition filed in this case is a correct copy of said answer.

VII. Respondent admits that on or about the 16th day of November, 1891, the Nashville, Chattanooga & St. Louis Railway Company, in its own name, and as sole lessee of the Western & Atlantic Railroad, filed its answer to said petition before said Commission; and that Exhibit "C" to the petition filed in this case is a correct copy of said answer.

VIII. Respondent admits that on or about the 23rd day of November, 1891, the Western & Atlantic Railroad Company filed its answer to said petition before said Commission; and that Exhibit "D" to the petition filed in this case is a correct copy of said answer.

IX. Respondent admits that on or about the 18th day of January, 1892, the Cincinnati, New Orleans & Texas Pacific Railway Company filed its answer to said petition before said Commission; and that Exhibit "E" to the petition filed in this case is a correct copy of said answer.

X. Respondent admits that the matters complained of in said petition filed by L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of the State of Georgia, came on to be heard before said Interstate Commerce Commission at a special session thereof, held at Atlanta, Georgia, on or about the 24th day of March, 1892, whereof respondent had due and sufficient notice; and respondent supposes that the other defendants also had due and sufficient notice of said hearing.

XI. Respondent denies that it was made to appear that respondent had in any respect violated any of the provisions of the act to regulate commerce. Respondent denies that said Interstate Commerce Commission duly or legally determined the matters or things in controversy between said parties. Respondent admits that said Commission on or about the 11th day of November, 1892, made a report in writing in respect thereof; and that Exhibit "H" to the petition filed in this case is a correct copy of said report. Respondent admits that said report included certain alleged findings of fact, upon which certain alleged conclusions of said Commission were based.

XII. Respondent admits that said Commission formulated an order and notice in relation to the matters and things stated and charged in said petition filed before said Commissioners; but respondent denies that said order and notice was duly made or that it was made agreeably to the requirements of the statute in such cases made and provided, or that it now remains in force or effect, though respondent admits that said order and notice has never been vacated or set aside, altered, modified, or changed in any respect by said Commission; and it admits that
90 Exhibit "I" to the petition filed in this case is a correct copy of said order and notice.

XIII. Respondent admits that *that* it was furnished with a properly authenticated copy of said report and order and notice on or about the 11th day of November, 1892; and respondent supposes that the other defendants were also furnished with properly authenticated copies of said report and order and notice.

XIV. Respondent denies that it has been unmindful of its duty or of any lawful decision or determination of said Commission, or that it has through its officers, servants, or attorneys, or otherwise, disregarded or set at naught the lawful authority of said Commission; or that it has wilfully or knowingly, or at all, violated or disobeyed any lawful order or notice of said Commission, or that it has neglected or refused to comply with any lawful order of said Commission, at Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, or elsewhere. Respondent admits that it has not applied to said Commission for relief from the operation of the fourth section of the act to regulate commerce; and the reason that no such application has been made is that it has never done or proposed to do anything which required relief from the operation of that section.

XV. Respondent is advised and insists that the order and notice made and issued by the Interstate Commerce Commission in this case is unlawful and void, for the following among other reasons:

The transportation of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and

Marietta, in the State of Georgia, is not conducted under substantially similar circumstances and conditions with transportations of property from Cincinnati and other Ohio River points to Atlanta, Georgia.

Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are local stations on the line of the Western & Atlantic Railroad. There is no navigable water course at any of said places. There is no other railroad at any of said places except at Kingston, Cartersville, and Marietta. There is no competition by either rail or water existing at either of said places. There are various competing lines of transportation running from Cincinnati and other Ohio points to Atlanta, and the rates from Cincinnati and other Ohio River points to Atlanta are fixed by that competition.

The Louisville and Nashville Railroad from Cincinnati to Nashville, the Nashville, Chattanooga & St. Louis Railway from Nashville to Chattanooga, and the Western & Atlantic Railroad from Chattanooga to Atlanta, forms one of said lines, and it is impossible for that line
91 to obtain higher rates from Cincinnati and other Ohio River points to Atlanta than are charged by its numerous and powerful competitors.

There are also various other competing lines of transportation running to Atlanta from Cairo, Memphis, Greenville, Vicksburg, New Orleans, Mobile, and other Mississippi River and Gulf points. There are also various competing lines of transportation running to Atlanta from Boston, New York, Philadelphia, Baltimore, and other North Atlantic ports. The competition by all of such lines consists in the carriage by those lines to Atlanta of products similar to the products carried there by the lines running from Cincinnati and other Ohio River points. The lines from Cincinnati and other Ohio River points to Atlanta are forced to accept rates which bear a certain relation to the rates offered on similar products by the lines running to Atlanta from Cairo, Memphis, Greenville, Vicksburg, New Orleans, Mobile, and other Mississippi River and Gulf points, and by the lines running to Atlanta from Boston, New York, Philadelphia, Baltimore, and other North Atlantic ports.

The rates from Cincinnati and other Ohio River points to Chattanooga are fixed by the active competition which exists between various lines of transportation which run from Cincinnati and other Ohio River points to Chattanooga.

The Louisville & Nashville Railroad from Cincinnati to Nashville, and the Nashville, Chattanooga & St. Louis Railway from Nashville to Chattanooga, forms one of said lines; and it is impossible for that line to obtain higher rates from Cincinnati and other Ohio River points to Atlanta than are charged by its competitors.

Said rates from Cincinnati and other Ohio River points to Chattanooga are divided between the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company individually in certain agreed proportions. The Nashville, Chattanooga & St. Louis Railway Company as lessee of the Western & Atlantic Railroad receives no proportion of said rates, because as such lessee it renders no part of the transportation between the Ohio River and Chattanooga.

Freight rates from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, are

combination rates, arrived at by taking the rates from Cincinnati and other Ohio River points to Chattanooga and adding thereto certain reasonable local rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, respectively.

Said local rates are reasonable and are such as are approved by the railroad commission of the State of Georgia, under an act
92 of the legislature of that State which authorizes said commission to decide upon the reasonableness of such rates.

When freights are tendered to the Louisville & Nashville Railroad Company at Cincinnati and other Ohio River points destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, Georgia, it issues its own bills of lading, and guarantees that the total rates to destination shall not exceed the through rates to Chattanooga, added to the local rates charged on the Western & Atlantic Railroad, on such shipments from Chattanooga to said points of destination, respectively; but respondent does not obligate itself, or any of its said connections, for the continuous carriage or shipment of such freight beyond their own lines respectively; nor does respondent assume to control in any way the local rates which may be charged upon such freights for transportation over the Western & Atlantic Railroad.

Respondent as one of the connecting carriers does not receive any part of the local rates charged for the transportation over the Western & Atlantic Railroad from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta; and it is wholly immaterial to respondent as such connecting carrier whether freight shipped from Cincinnati and other Ohio River points stop at Chattanooga or go forward to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta.

As before stated, the Nashville, Chattanooga & St. Louis Railway Company as lessee of the Western & Atlantic Railroad declines to form a through route or to agree upon through rates to its said local stations from Cincinnati and other Ohio River points.

It receives shipments destined to such stations for the first time at Chattanooga, and insists upon charging the same rates from Chattanooga to destination as if said shipments had originated at Chattanooga.

As before stated, respondent and the Nashville, Chattanooga & St. Louis Railway Co. individually, and as lessee of the Western & Atlantic Railroad, charges the highest through rates which competition will allow them to obtain on all through freights shipped from Cincinnati and other Ohio River points to Atlanta; and if they should be forced, by decree in this case, to raise said rates to Atlanta, such shipments would go by rival lines.

While the proportions which the Nashville, Chattanooga & St. Louis Railway as lessee of the Western & Atlantic Railroad receives of such through rates to Atlanta are small, they are more than the additional cost of such transportation; and therefore it is to the interest of that company as such lessee as well as of the public, that it should be allowed to compete for that traffic. But if said company as such
93 lessee were forced to carry all of its traffic at rates as low as the proportions which it receives from said through rates, it would be impossible for it to earn operating expenses.

If the order made by the Commission in this case should be enforced, said company, as such lessee, would be forced to abandon said through

rates to Atlanta and adhere to its present local rates to Calhoun, Adairsville, Kingston, Acworth, Cartersville, and Marietta. Those stations therefore would not be benefited in the least, and the only result would be to deprive Atlanta of the benefit of the competition now afforded by that company, as such lessee, and to deprive that company, as such lessee, of such revenue as it now derives from the Atlanta traffic.

And having fully answered, respondent prays to be hence dismissed with its reasonable costs.

[L. S. SEAL.] ED. BAXTER,
Solicitor for respondent, Louisville and Nashville Railroad Company.
By M. H. SMITH, *President.*

Attest:

J. H. ELLIS, *Secretary.*

STATE OF KENTUCKY, *Jefferson County:*

Personally appeared before me, G. W. B. Olmstead, a notary public duly appointed, commissioned, and qualified in and for the State and county aforesaid, M. H. Smith and J. H. Ellis, who are respectively the president and secretary of the Louisville and Nashville Railroad Company, the above-named respondent, and signed the foregoing answer, and affixed thereto the seal of said company as the answer of said company.

Witness my hand and notarial seal of office, at Louisville, Ky., this 8th day of August, 1893.

[SEAL OF N. P.] G. W. B. OLMSTEAD,
Notary Public.

Filing: Filed in clerk's office 10 day of Aug., 1893. O. C. Fuller, clerk.

94 *Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526.*

In the United States circuit court for the northern district of Georgia.
In equity, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE ATLANTA & WEST POINT R. R. CO., et al.

In the United States circuit court for the northern district of Georgia.
In equity, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE GEORGIA RAILROAD & BANKING CO., et al.

In the United States circuit court for the northern district of Georgia.
In equity at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC R. R. CO. ET AL.

Stipulation.

In the above cases it is stipulated and agreed by counsel as follows, viz:

I. The testimony of witnesses, the extracts from rates on file with the

Interstate Commerce Commission, the extracts from annual reports filed by carriers with said.....Commission, the extracts from statistical or other data compiled by, or on file in the offices of, the statistician and auditor of said Commission which were used by said Commission on the hearing of the above-mentioned cases may be used by either of the parties as evidence on the hearing of any one or more of the above-meationed cases in the United States circuit court, subject to objection by either party as to its competency or
95 relevancy in any one or more of said cases in which it may be offered or relied upon; but all formal objections are waived. A copy of said testimony and of extracts, certified by the secretary of said Commission, shall be filed in each of the above-mentioned circuit courts, and it may be used, subject to the above-mentioned objections, as evidence in any one or more of the above-mentioned cases.

II. Counsel will join in an application to the United States circuit court for the northern district of Georgia, to hear at one and the same time the three cases mentioned above as pending in that court; and they will join in an application to the United States circuit court for the southern district of Georgia, to hear at one and the same time the two cases mentioned above as pending in that court.

III. Either party on the hearing of any one or more of the above-mentioned cases in the United States circuit court may use as evidence additional extracts from rates on file with said commission, additional extracts from annual reports filed by carriers with said commission, and additional extracts from statistical or other data compiled by or on file in the offices of the statistician and auditor of said commission, subject to objection by either party, as to its competency or relevancy, in any one or more of said cases in which it may be offered or relied upon; but all formal objections are waived. Copies of such extracts as may be intended to be used by either party shall be certified by the secretary of said commission, and furnished to the opposite party, who shall have fifteen days thereafter in which to file counter extracts or testimony. Either party filing such extracts shall at the same time indicate*d* in which of the above-mentioned cases they are to be used.

June 19, 1897.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.
ED. BAXTER,
Solicitor for the Defendants as of Record.

Filing: Filed in clerk's office June 21st, 1897. O. C. Fuller, clerk.

Stipulation as to depositions of E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

96 THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions

of the following-named witnesses for the complainant, to wit, E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight, of Cartersville, Ga., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Paul F. Akin, esq., of Cartersville, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants.

Filing: Filed in clerk's office 23 day of Mch., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Interrogatories to E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories filed in the above-entitled cause in behalf of the complainant therein, and to be exhibited to E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight, of Cartersville, Ga.

Interrogatory No. 1. What is your name and residence, and in what occupation or business are you engaged?

97 Interrogatory No. 2. If you say you reside at Cartersville, Ga., state how long that place has been your residence, and how long you have been engaged in business there, and in what business.

Interrogatory No. 3. State whether merchants of Atlanta, Ga., sell goods and do business at Cartersville, Marietta, Acworth, Kingston, Adairsville, Calhoun, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond Cartersville, from Atlanta, at which Atlanta merchants sell goods or do business, and state how far such points are from or beyond Cartersville, and whether goods, in order to reach such points, from Atlanta, have to be hauled through Cartersville, and over what road.

Interrogatory No. 5. State whether merchants of Cartersville attempt to sell goods and do business at such points, in territory around and beyond Cartersville, and whether, in doing so, they come in competition with merchants of Atlanta.

Interrogatory No. 6. State whether Cartersville merchants can successfully compete with Atlanta merchants in selling goods and doing business at Cartersville, and in territory around and beyond Cartersville.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Cartersville merchants are placed at a disadvantage in this

competition with Atlanta merchants, state what this disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this disadvantage results from a discrimination in rates in favor of Atlanta and against Cartersville, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination in favor of Atlanta has existed, and what effect, if any, it has had in retarding the growth of Cartersville.

98 Interrogatory No. 10. State whether Cartersville merchants buy their goods from Atlanta or direct from Cincinnati or other sources of supply, and when goods are bought in Cincinnati, whether they are shipped to Cartersville under a through bill of lading, naming a through rate to Cartersville, and whether goods are hauled through from Cincinnati to Cartersville without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Cartersville.

Interrogatory No. 12. Are there any other railway lines or roads reaching Cartersville besides the Western & Atlantic? If so, state whether such other lines or roads have connections with roads leading to or from Cincinnati. Name such lines and connections.

Interrogatory No. 13. Do transportation rates or charges enter into and affect the prices of which yourself and other Cartersville merchants can sell goods to consumers in and around Cartersville?

Interrogatory No. 14. How would a reduction in the rates on goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Cartersville, Marietta, Acworth, Adairsville, Kingston, and Calhoun could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 15. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 16. Will a reduction in the rates on all classes of goods from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates from Cincinnati to Atlanta, increase or

99 diminish the tonnage of traffic which will be hauled by the roads to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun? Give your reason for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 17. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality, and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 18. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 19. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Answers of J. W. Vaughan.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. W. Vaughan, a material witness for the plaintiff in the above-entitled case.

The witness, J. W. Vaughan, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

100 Answer to interrogatory No. 1: My name is James W. Vaughan; my residence is Cartersville, Ga.; I am engaged in the dry-goods business.

Answer to interrogatory No. 2: I have resided in Cartersville since the 23d of January, 1890; I have been engaged in the dry-goods business since residing here.

Answer to interrogatory No. 3: They do.

Answer to interrogatory No. 4: Atlanta merchants sell goods and do business in Kingston, Adairsville, Rome, and Cedartown; these points are 10, 20, 30, and 36 miles from here, respectively; to the first two points named, they must be hauled through Cartersville over the Western & Atlantic Railroad; to Rome they go over the Western & Atlantic Railroad and Rome Railroad; to Cedartown, over the Western & Atlantic Railroad and East & West Railroad of Alabama.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants can not successfully compete with merchants of Atlanta because of the discrimination in freight rates against Cartersville in favor of Atlanta.

Answer to interrogatory No. 8: First-class rates from New York to Atlanta or Rome is $1.14 per hundred pounds and to Cartersville the same rate is $1.38. This difference of 24 cents against us would cover our profit on heavy or stable goods.

Answer to interrogatory No. 9: This discrimination against Cartersville in favor of Atlanta and Rome has existed ever since I have lived

in Cartersville to my certain knowledge. It has retarded the growth of Cartersville and makes it impossible to do a wholesale or jobbing business here.

101 Answer to interrogatory No. 10: Cartersville merchants buy their goods from Atlanta, New York, Cincinnati, and may [many] other points; my goods are shipped from New York to Cartersville under a through bill of lading, at $1.38 per hundred pounds on first-class goods. I cannot answer to remainder of this interrogatory.

Answer to interrogatory No. 11: The population of Cartersville is about 3,000; there are no manufacturing enterprises of any consequence in Cartersville and no mercantile enterprises except the ordinary dry-goods and grocery stores.

Answer to interrogatory No. 12: Yes. The East & West Railroad; it connects with the Southern Railroad at Rockmart and the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: A rate from Cincinnati or New York to Cartersville and other points mentioned in the interrogatory equalled to the Atlanta and Rome rate would put us on an equal footing with them and enable us to reach a trade which we cannot now sell. Such rates would lower prices.

Answer to interrogatory No. 15: The lower the price the greater the consumption of goods. This is my opinion and has been my experience.

Answer to interrogatory No. 16: A reduction of rates on goods of all classes from Cincinnati to Cartersville and other named points will increase the tonnage of traffic hauled by the roads to Cartersville and other named points, because we could sell goods for less price and reach out into broader territory.

Answer to interrogatory No. 17: Low rates affords opportunities for jobbing houses, manufacturing enterprises, the investment of capital, and necessarily the employment of a great number of hands to operate these enterprises, thereby promoting prosperity and increasing the population of the locality which has low or preferential rates.

102 Answer to interrogatory No. 18: High, or rates which discriminate against a locality have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: It is impossible for a locality to thrive or prosper unless it can share the same through rates as other localities with which it would naturally compete for business. Capital seeking investment would not locate at a point where there is the least discrimination in freight rates against such locality; and for that reason Cartersville has not been successful in influencing the building of or fostering manufacturing enterprises. We cannot conduct a wholesale business in any line or manufacture until we secure a lower rate.

J. W. VAUGHAN. [L. S.]

Answer sworn to and subscribed to before me, commissioner, Cartersville, Ga., this Sept. 21, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answer of Thomas Lumpkin.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al.	In equity, No. 524.

Answers to direct interrogatories propounded to Thomas Lumpkin, a material witness for the plaintiff in the above entitled case:

The witness, Thomas Lumpkin, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is Thomas Lumpkin; my residence is Cartersville, Ga.; I am engaged in the hardware, implement, and machinery busines.

Answer to interrogatory No. 2: I have lived inside of the city limits for the last five years; I have lived within three miles of Carters-
103 ville for 25 years; I was engaged in the implement and machinery business for 10 or 12 years and for the last five years in the hardware business also.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do sell goods and do business in Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and also in the territory around these points.

Answer to interrogatory No. 4: Merchants of Atlanta, Ga., sell goods and do business in Marietta, Acworth, Adairsvilie, Kingston, and Calhoun; these points are from ten to twenty-eight miles from Cartersville; goods sold at these places have to be hauled over the Western & Atlantic Railroad and to Kingston, Adairsville, and Calhoun have to be hauled through Cartersville; merchants of Atlanta also do business and sell goods in Stilesboro, Rockmart, and Taylorsville; the goods are hauled either by the Southern Railway, or by the Western & Atlantic Railroad to Cartersville, and then over the East & West Railroad to these points.

Answer to interrogatory No. 5: I do attempt to sell goods at points and in the territory around Cartersville and come in competition with the merchants of Atlanta.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: The merchants of Cartersville are placed at a disadvantage with the merchants of Atlanta because of the discrimination in freight rates against Cartersville.

Answer to interrogatory No. 8: The freight rates, per hundred pounds, on mowers and reapers from Chicago to Atlanta is 58 cents, and from the same point to Cartersville is 59 cents, on carloads. The freight rate on drills from Springfield, Ohio, is eleven cents more to Cartersville, per hundred pounds, than it is to Atlanta, which amounts to about $30.00 per car. Atlanta has the same advantage on buggies from Cincinnati.

Answer to interrogatory No. 9: This discrimination has existed in favor of Atlanta for about 12 years, so far as I know, and has retarded the growth of Cartersville.

104 Answer to interrogatory No. 10: I buy the great bulk of my goods from Cincinnati, Ohio, and other points in the West, a very little from Atlanta. Goods are shipped from Cincinnati, Ohio, under a through bill of lading, naming a through rate to Cartersville, and are hauled through without a transfer or breakage of bulk and in the same cars in which they are originally loaded.

Answer to interrogatory No. 11: The population of Cartersville is about 3,500; there is a carriage factory and ice factory in Cartersville; there is an ochre mill and a great many mining enterprises around Cartersville. There is about ten thousand bales of cotton shipped from Cartersville every year.

Answer to interrogatory No. 12: There is one railroad reaching Cartersville besides the Western & Atlantic, the East & West of Alabama; it connects with the Southern Railway, the C. R. & C. R. R., also a connection from Birmingham for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: If a reduction of rates from Cincinnati was made, so as to make the rate the same at [as] the rate to Atlanta from Cincinnati, the merchants of Cartersville would be enabled to sell their goods cheaper and thus be able to compete with the merchants of Atlanta.

Answer to interrogatory No. 15: The price of goods do affect the sale of goods; more goods are sold when they are cheap. This has been my experience and is my opinion.

Answer to interrogatory No. 16: A reduction of the rates on all classes of goods from Cincinnati to Cartersville (I don't know about the other places), so as to make the rates not higher to this point than to Atlanta, would greatly increase the tonnage of traffic to this point. My implement and machinery business extends over a large territory. I frequently find that I can not ship goods to Cartersville and distribute them with profit, and successfully compete with the merchants of Atlanta,
105 because of the discrimination in rates in favor of Atlanta. This also applies to buggies and wagons. I have often found it necessary to ship goods to Atlanta, in less than carload lots, and then reship to Cartersville, and could thereby save freight.

Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase business, induces the investment of capital there, increases the population, and generally increases the prosperity of such locality.

Answer to interrogatory No. 18: High rates, or rates which discriminate against a locality, have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: Rome and Atlanta having the same freight rate, which is lower than that to Cartersville, and Cartersville being situated between the two, this discrimination in favor of Rome and Atlanta is ruinous to the business of Cartersville. Cartersville being situated in the center of a fine agricultural and mineral region, if it had the same freight rates as Rome and Atlanta, the business of Cartersville would be very greatly increased, the property would increase in value, the population would increase and the town and community generally benefited.

THOS. LUMPKIN. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., Sept. 20, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answer of J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. W. Knight, a material witness for the plaintiff in the above-entitled case.

The witness, J. W. Knight, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

106 Answer to interrogatory No. 1: My name is J. W. Knight; my residence is Cartersville, Ga.; I am engaged in the hardware business.

Answer to interrogatory No. 2: I have resided here for about thirty years; I have been engaged in business for about 12 years; the hardware business all the time.

Answer to interrogatory No. 3: They do.

Answer to interrogatory No. 4: Merchants of Atlanta, Ga., sell goods and do business in Kingston, Adairsville, and Calhoun. These points are ten, twenty, and thirty miles, respectively, from Cartersville, Stilesboro, Rockmart, and Taylorsville; these points are ten, fifteen, and twenty-five miles, respectively, from Cartersville. Goods, to reach the first three named places, have to be hauled through Cartersville and over the Western & Atlantic Railroad. Goods, to reach the last three named points, namely, Stilesboro, Rockmart, and Taylorsville, have to be hauled through Cartersville, over the Western & Atlantic Railroad, and from Cartersville over the East & West Railway.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants are placed at a disadvantage with merchants of Atlanta, because of the discrimination in freight rates against Cartersville.

Answer to interrogatory No. 8: The freight rate on grain drill to Cartersville from Louisville is $1.03 per hundred pounds on less than car loads, and to Atlanta it is 92 cents.

Answer to interrogatory No. 9: This discrimination in rates against Cartersville has existed, to my certain knowledge, ever since I have been in business here. Merchants here could do no jobbing busi-
107 ness; all the trade has had to be purely local, and that always retards the growth of any town.

Answer to interrogatory No. 10: Merchants buy their goods from Atlanta, Cincinnati, and many other points. Goods bought in Cincinnati are shipped through to Cartersville on a through bill of lading, naming a through rate, and if in car lots are shipped without transfer and in the same cars in which they are originally loaded.

Answer to interrogatory No. 11: The population of Cartersville is about three thousand. There is an ice factory, carriage factory, and ochre mills in Cartersville. There are no mercantile enterprises except the retail dry goods and grocery houses.

Answer to interrogatory No. 12: Yes. The East & West Railway reaches Cartersville and connects with the Southern Railway at Rockmart for Cincinnati. It also connects with the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: If a reduction of rates on all goods of all classes from Cincinnatti to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made so as to make the rate the same as that to Atlanta would cause a reduction in the price of goods at which I and merchants of the other named places could sell their goods.

Answer to interrogatory No. 15: The lower the price of goods the greater the consumption. This has been my experience and is my opinion.

Answer to interrogatory No. 16: If a reduction on goods of all classes was made from Cincinnati to Cartersville, Marietta, Acworth, Adairsville, and Calhoun, so as to make the rate the same as that to Atlanta, it would increase the tonnage of traffic, because the goods would be cheaper, the sale would be greater, and the merchants would have to buy more goods.

Answer to interrogatory No. 17: Low or preferential rates to a
108 locality have a tendency to increase the population. They attract the investment of capital there, the building of factories and other enterprises, and generally promote the prosperity of such locality.

Answer to interrogatory No. 18: High or rates which discriminate against a locality have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: I know of no other matter that may be of benefit to either party in this case or that is material thereto.

J. W. KNIGHT. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 22, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answers of J. E. Field.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. E. Field, a material witness for the plaintiff in the above entitled case.

The witness, J. E. Field, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is J. E. Field; my residence

is Cartersville, Ga.; I am engaged in selling mules, fertilizers, cotton, and machinery.

Answer to interrogatory No. 2: Cartersville has been my residence since 1858. I have been engaged in business since 1887. I was in the mule and horse business alone up to 6 years ago. Since then I have been in the cotton, fertilizer, and machinery business also.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do
109 sell goods and do business in Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and in the territory around these points.

Answer to interrogatory No. 4: Merchants of Atlanta do business and sell goods in Marietta, Acworth, Kingston, Adairsville, and Calhoun; these points are from 10 to 28 miles from Cartersville; goods have to be hauled over the Western & Atlantic Railroad to these points and through Cartersville to Kingston, Adairsville, and Calhoun; merchants of Atlanta also do business and sell goods in Stilesboro and Taylorsville; these points are from twelve to seventeen miles from Cartersville; goods to these points have to be hauled to Cartersville over the Western & Atlantic Railroad and then over the East & West of Alabama.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants are placed at a disadvantage because of the discrimination in rates against Cartersville in favor of Atlanta.

Answer to interrogatory No. 8: The freight rate on mules from St. Louis to Cartersville is $115.00, to Atlanta it is $95.00. The freight rate on fertilizers from Charleston, S. C., per ton to Cartersville is $3.89; to Rome it is $3.00. Rome is beyond Cartersville. The above rates are what I have always paid in the past.

Answer to interrogatory No. 9: This discrimination in favor of Atlanta against Cartersville has existed to my certain knowledge ever since I have been in business here; it has greatly retarded the growth of Cartersville.

Answer to interrogatory No. 10: Merchants of Cartersville buy some of their goods from merchants of Atlanta, but they get the great bulk of their goods from Cincinnati and other points in the West; goods bought in Cincinnati are shipped through to Cartersville under a through bill of lading, naming a through rate to Cartersville, and in the same cars in
which they were originally loaded.

110 Answer to interrogatory No. 11: The population of Cartersville is about 3,600; the manufacturing enterprises of Cartersville are an ice factory, carriage factory, and ochre mill; I know of no mercantile enterprises except the retail grocers and dry goods.

Answer to interrogatory No. 12: There is one railroad reaching Cartersville besides the Western & Atlantic, the East & West of Alabama; it connects with the Southern Railway at Rockmart for Cincinnati; it also connects with the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: They do.

Answer to interrogatory No. 14: If a reduction of rates on all goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made, it would lower the price of

goods in those points and enable the merchants of those places to compete with Atlanta merchants.

Answer to interrogatory No. 15: When goods are cheap, merchants can do a great deal larger business and sell more goods. This has been my experience and is my opinion.

Answer to interrogatory No. 16: If a reduction of the rates to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made so as to be on an equal footing with Atlanta, the tonnage of traffic would be doubled. I am sure it would at Cartersville, because there are a great many mines around Cartersville which are not now being worked on account of the rates being so high.

Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase the population because they promote the prosperity generally and induce the investment of capital there.

Answer to interrogatory No. 18: High, or rates which discriminate against a locality have just the opposite effect which low or preferential rates have, as stated in the preceding interrogatory.

111 Answer to interrogatory No. 19: There have been several manufacturing enterprises here which have had to close up their business and leave on account of the discrimination in rates against Cartersville. They could not successfully compete with other points which had a lower rate.

J. E. FIELD. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 27, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answers of E. Strickland.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Answers to direct interrogatories propounded to E. Strickland, a material witness for the plaintiff in the above-entitled case.

The witness, E. Strickland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is E. Strickland. My residence is Cartersville, Georgia. I am engaged in the grocery busines'.

Answer to interrogatory No. 2: I have lived in Cartersville, Ga., twelve years. In 1892 I was not engaged in any business. With that exception I have been in the grocery business.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do business at Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and also in the territory around these points.

Answer to interrogatory No. 4: Atlanta merchants do business and sell goods in ..... Kingston, Adairsville, Calhoun, Acworth, and Marietta, and surrounding territory: the above-named places are from ten to thirty miles from Cartersville; goods
112 have to be hauled through Cartersville to Kingston, Adairsville, and Calhoun, and the goods have to be hauled over the Western & Atlantic Railroad. Merchants also do business and sell goods in Stilesboro, Taylorsville, and Cedartown, and Rockmart; the above-named places are from ten to thirty-six miles from Cartersville; the goods have to be hauled over the Western & Atlantic Railroad to Cartersville, and then over the East & West Railroad.

Answer to interrogatory No. 5: Merchants of Cartersville do attempt to do business in the places named in the answer to the 4th interrogatory, and thereby come in competition with merchants of Atlanta, Ga.

Answer to interrogatory No. 6: The merchants of Cartersville can not successfully compete with the merchants of Atlanta in selling goods and doing business in Cartersville and the territory and places around Cartersville.

Answer to interrogatory No. 6: The disadvantage that Cartersville merchants are placed in, as testified to in the preceding interrogatory, is due to the fact that the freight rates are lower to Atlanta, Ga., from all points than they are from the same points to Cartersville.

Answer to interrogatory No. 8: The following is an example of the discrimination in the freight rates in favor of Atlanta against Cartersville: There is thirteen cents more per hundred pounds charged on meat from Chicago to Cartersville than there is from Chicago to Atlanta; for example, the rate from Chicago to Atlanta per hundred pounds on meat is 47 cents, and the rate to Cartersville is 60. Another example, bagging: the rate per hundred pounds is 20 cents to Atlanta, Rome, Cedartown, and Dalton, and 31 cents to Cartersville from Charleston, S. C., while Rome, Cedartown, and Dalton are beyond Cartersville.

Answer to interrogatory No. 9: The discrimination in rates in favor of Atlanta against Cartersville has existed, to my certain knowledge, for twelve years, and has retarded the growth of and worked a great injury to Cartersville.

Answer to interrogatory No. 10: The merchants of Carters-
113 ville buy some of their goods from Atlanta, but most of them from northern and western points. When goods are bought from Cincinnati in car loads, they are shipped on a through bill of lading to Cartersville, and shipped in the car originally loaded in; in less than car loads, they are shipped on through bill of lading, but change car.

Answer to interrogatory No. 11: The population of Cartersville is about 3,500. There is a carriage factory, ice factory, and ochre mill situated in Cartersville. There are no mercantile enterprises except the retail merchants.

Answer to interrogatory No. 12: There is one railroad, besides the Western & Atlantic, which reaches Cartersville—the East & West Railroad of Alabama. The East & West Railroad connects with the Southern Railway at Rockmart, Ga., and the Southern Railway connects with Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: A reduction of rates on goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun would reduce the price at which merchants of these places could sell their goods. Such reduction would lower the prices of goods sold by Cartersville merchants and the merchants of Marietta, Acworth, Kingston, Adairsville, and Calhoun.

Answer to interrogatory No. 15: When the prices on goods are low the consumption is greater. More goods are sold to consumers when the goods are cheap. This is my opinion and experience.

Answer to interrogatory No. 16: A reduction of the rates on all classes of goods from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun would increase the tonnage of traffic hauled by the roads to the above-named places. This is my opinion. If a reduction of the rates was made, the merchants of Cartersville and the above-named places could get their goods cheaper, and could thereby successfully compete with the points that now have through and lower freight rates than Cartersville and the other named places, and could control the trade of their respective territories.

114 Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase the population of that locality and to induce the investment of capital there, and generally promotes the prosperity of such locality.

Answer to interrogatory No. 18: High rates, or rates which discriminate against a locality, have just the opposite effect as that stated in the preceding paragraph.

Answer to interrogatory No. 19: Cartersville is surrounded by four points—Rome, Dalton, Cedartown, and Atlanta—which points enjoy through rates and commodity rates, lower than the rates to Cartersville, and which enable them to come into the territory which naturally and legitimately belongs to Cartersville, and do business which the merchants of Cartersville could do if they had the same rates as the above-named points.

E. STRICKLAND. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 14, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

I, Paul F. Akin, of Cartersville, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witnesses, to wit, E. Strickland, J. E. Field, J. W. Vaughan, Thomas Lumpkin, and J. W. Knight, and after having duly sworn them to speak the truth, the whole truth, and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This Sept. 27, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

[Indorsements on envelope.]

To O. C. Fuller, esq., clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Ga.

Received of Paul F. Akin, commissioner in the above-stated case, the interrogatories of E. Strickland, J. E. Field, J. W. Vaughan, J. W. Knight, and Thomas Lumpkin, this Sept. 28, 1897. Martin Collins, P. M. Atlanta, Ga. Received by due course of mails this 29 day of September, 1897. Amos Fox, P. M.

Received from the hands of the postmaster at Atlanta, Ga., and filed this 29 day of Sept., 1897. O. C. Fuller, clerk.

115 *Stipulation as to depositions of W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

In the above entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions of the following-named witnesses for the complainant, to wit, W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson, of Marietta, Georgia, may be taken on the foregoing and annexed direct and cross-interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that George D. Anderson, esq., of Marietta, Georgia, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHEAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for Defendants as of Record.

Filing: Filed in clerk's office, 12 day of Aug., 1897. O. C. Fuller, clerk; by J. D. Steward, deputy.

Interrogatories to W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories filed in the above entitled cause on behalf of the complainant therein, and to be exhibited to W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson, of Marietta, Georgia.

116 Interrogatory No. 1. What is your name and residence, and in what occupation are you engaged?

Interrogatory No. 2. If you say you reside in Marietta, Georgia, state how long that place has been your residence, and how long you have been engaged in business there, and in what business?

Interrogatory No. 3. State whether merchants of Atlanta, Ga., sell goods and do business at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and also in territory around those points?

Interrogatory No. 4. Name points or localities around or beyond Marietta from Atlanta, at which Atlanta merchants sell goods or do business, and state how far such points are from or beyond Marietta, and whether goods in order to reach such points from Atlanta have to be hauled through Marietta, and over what road?

Interrogatory No. 5. State whether merchants of Marietta attempt to sell goods and do business at such points in territory around and beyond Marietta, and whether in doing so they come in competition with merchants of Atlanta?

Interrogatory No. 6. State whether Marietta merchants can successfully compete with Atlanta merchants in selling goods and doing business at Marietta, and in territory around and beyond Marietta?

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Marietta merchants are placed at a disadvantage in this competition with Atlanta merchants, state what the disadvantage results from?

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this advantage results from a discrimination in rates in favor of Atlanta and against Marietta, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination favor
117 of Atlanta has existed and what effect, if any, it has had in retarding the growth of Marietta?

Interrogatory No. 10. State whether Marietta merchants buy their goods from Atlanta, or direct from Cincinnati, or other sources of supply, and when goods are bought in Cincinnati, whether they are shipped to Marietta, under a through bill of lading, naming a through rate to Marietta, and whether goods are hauled through from Cincinnati to Marietta, without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Marietta.

Interrogatory No. 12. Do transportation rates or charges enter into and affect the prices at which yourself and other Marietta merchants can sell goods to consumers in and around Marietta?

Interrogatory No. 13. How would a reduction in the rates on goods of all classes from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsdale, and Calhoun, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 14. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 15. Will a reduction in the rates on all classes of goods from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates from Cincinnati to Atlanta, increase or diminish the tonnage of traffic which will be hauled by the roads to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun? Give your reasons for whatever opinion you may express in answer to this interrogatory.

118 Interrogatory No. 16. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 17. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Solr. for Defts. as of Record.

Answers of Walter L. Sessions.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION,
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

STATE OF GEORGIA, *County of Cobb:*

By virtue of an agreement between counsel in the above stated cause, I have caused the witnesses hereinafter named to come before me separately and be examined touching the matters asked in the foregoing interrogatories.

The witness, Walter L. Sessions, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers: Walter L. Sessions, Marietta, Cobb County, Georgia, by occupation a merchant.

119 To the 2nd interrogatory he answers: I have resided in Marietta 22 years, and have been selling goods about 15 years.

To the 3rd interrogatory he answers: Atlanta merchants sell goods at Marietta, Acworth, Cartersville, Kingston, and Adairsville, and points in and around Marietta.

To the 4th interrogatory he answers: Acworth is about 15 miles from Marietta, Cartersville about 28, Kingston about 40, Kennesaw about 8, all on the W. & A. R. R., and goods to reach these points from Atlanta have to be hauled through Marietta over said road. Woodstock, Canton, Ball Ground, Tate, Holly Springs, are on the A., K. & N. R. R. at a distance from 12 to 46 miles from Marietta, and goods to reach these points from Atlanta have to pass through Marietta.

To the 5th interrogatory he answers: On account of discriminating freight rates, the merchants of Marietta can not compete with the merchants of Atlanta at these points.

To the 6th interrogatory he answers: No.

To the 7th interrogatory he answers: This disadvantage is a result of a discrimination in freight rates in favor of Atlanta and against Marietta.

To the 8th interrogatory he answers: Atlanta being 20 miles further from Cincinnati than Marietta is, the freight rate on 1st-class matter to Atlanta is $1.07 per 100 lbs., and to Marietta, on the same railroad, it is $1.27 per 100 lbs. on the same class, and goods bought by Atlanta merchants in Cincinnati would be hauled through Marietta to Atlanta at a lower rate of freight than they could be hauled to Marietta. Not only is this the case on 1st-class freight, but on all other classes of freight. On all classes the freight rate from Cincinnati and other Western points west of Chattanooga, Tenn., to Marietta is the rate from any of these points to Atlanta added to the local freight rate from Atlanta to Marietta.

To the 9th interrogatory he answers: This state of affairs has existed ever since my knowledge of business began 15 years ago; how much longer I do not know. It has had the effect of causing all mer-
120 chants who desire to do a wholesale business to leave Marietta and other points around here and go to Atlanta to do business, and has retarded the growth of Marietta by carrying away business capital, and has helped to build up Atlanta at the expense of Marietta. It has caused some factories to leave here for Atlanta, and a number of our citizens do business in Atlanta and live in Marietta.

To the 10th interrogatory he answers: Marietta merchants do buy goods from Cincinnati and other sources of supply, and their goods are shipped direct from Cincinnati and other Western points on a through bill of lading, and goods bought in carloads are hauled direct to Marietta without transfer or breakage and in the same cars in which they were originally shipped or loaded.

To the 11th interrogatory he answers: The population of Marietta is about 4,000. It does the largest marble business of any town in the State. It has two large chair factories, one large paper mill, one batt and waste mill, two foundries and machine shops, two planing mills, five marble yards, all working some five or six hundred hands, and having a large weekly pay roll. Marietta handles from ten to twelve thousand bales of cotton yearly, and does a business of about $8 every year.

To the 12th interrogatory he answers: Transportation rates enter into and affect the prices of goods in Marietta, and the higher freight makes the consumer pay a higher price for goods.

To the 13th interrogatory he answers: A reduction in the rates on all classes of goods from Cincinnati and other points on the W. & A. R. R. north and west of Chattanooga, Tenn., would have the effect of reducing

the price at which goods could be sold at Marietta, because the lower the cost of goods the lower they can be sold with a profit to the dealer. A reduction in freight rates would lower the price of goods to the consumer.

To the 14th interrogatory he answers: The cheaper goods can be sold, the more goods can be sold. More goods can be sold when they are cheap than when they are high.

To the 15th interrogatory he answers: A reduction in freight
121 rates to the points named would undoubtedly increase the tonnage of traffic hauled by the roads to said stations. I say this because a lower rate of freight would give a lower price on the same class of goods, and a lower price of goods will bring greater consumption, and a greater consumption of goods will cause more goods to be shipped, and the more goods that are shipped the more goods the roads will have to haul.

To the 16th interrogatory he answers: The lower the freight rate the greater the inducement to business men to settle in a place to sell goods, as they can sell goods cheaper and make the same profit, and the more goods that are sold in a place the more it is built up, and its progress is greater and its prosperity greater. It can compete better with other places and can do business further from home than a place with a high rate of freight.

To the 17th interrogatory he answers: High or discriminating rates against one locality and in favor of another retards its progress, as it impedes manufacturing enterprises, because the locality with cheaper freight rates offers bigger and better inducements for business men to engage in that kind of enterprises, and the locality with cheaper freight rates will sell more goods than the place with high rates, because the goods can be sold cheaper and the progress and prosperity of the place of low rates will be greater than the place with a high or discriminating rate.

To the 18th interrogatory he answers: I know of nothing more than I have stated that will be of benefit to the parties at issue.

WALTER L. SESSIONS.

Answers of D. N. Anderson.

The witness, D. N. Anderson, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposed as follows:

To the 1st interrogatory he answers: D. N. Anderson. I reside at Marietta, Georgia, and I am a merchant.

To the 2nd interrogatory he answers: I have been engaged in business at Marietta for about 20 years.

122 To the 3rd interrogatory he answers: Merchants of Atlanta do business at the points named in the 3rd interrogatory.

To the 4th interrogatory he answers: Besides the points named in the 3rd interrogatory, merchants of Atlanta do business at Woodstock and Canton, which are about 12 and 24 miles from Marietta, respectively, and goods to reach these points have to be hauled to Marietta on the W. & A. R. R., and then hauled over the A. K. & N. R. R. from Marietta.

To the 5th interrogatory he answers: The freight discrimination is such that they can not do much at selling goods at these points.

To the 6th interrogatory he answers: Not to any extent.

To the 7th interrogatory he answers: This disadvantage results from the excess in freight rates.

To the 8th interrogatory he answers: In most all cases we have to pay the rate to Atlanta from Louisville, Nashville, Chicago, Cincinnati, and other Western points and the local rate from Atlanta to Marietta.

To the 9th interrogatory he answers: It has existed for years. I do not know how long, and, of course, has hurt Marietta as a business point.

To the 10th interrogatory he answers: Goods bought in carload lots in Cincinnati and other points or sources of supply are shipped to Marietta in carload lots under a through bill of lading in the originally loaded car without transfer or breakage of bulk.

To the 11th interrogatory he answers: The population of Marietta is about 4,000, and we have chair factories, paper mills, waste mills, batt mills, knitting mills, marble mills, planing mills, foundries, and machine shops.

To the 12th interrogatory he answers: Transportation rates affect prices of goods at Marietta—the cost of transportation is added to the cost of the goods.

123 To the 13th interrogatory he answers: A reduction in freights from the points named would certainly lower the price at which the goods could be sold to the consumer.

To the 14th interrogatory he answers: More goods are sold to the consumer when they are cheap, and a point with cheap freight rates can compete better with other points than a point with high rates.

To the 15th interrogatory he answers: I think a reduction in freight rates from the points named to Marietta would increase the tonnage of traffic, because we would be able to compete with other points to advantage, and we could sell more goods because we could sell them cheaper, and the more sold the more the railroads would have to haul.

To the 16th interrogatory he answers: Freight rates have a great deal to do with the location of manufacturing enterprises of all kinds. Where cheap rates obtain they are much more apt to be located than where rates are high, and where capital is invested increases and promotes the prosperity of a place. Low freight rates are very beneficial to a place.

To the 17th interrogatory he answers: High rates to a locality, or rates that discriminate against a locality, tend to keep out all enterprises and to drive away capital—this hinders and retards the growth and prosperity of a locality.

To the 18th interrogatory he answers: I am a cotton dealer at Marietta, and ship about 6,000 bales of cotton a season. The W. & A. R. R. has been charging me on through cotton through Atlanta 19 cts. a hundred, but by shipping to Atlanta and reshipping to ports I get it at 13 cts. a hundred, the commission rate.

D. N. ANDERSON.

Answers of J. P. Legg.

The witness J. P. Legg, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

124 To the 1st interrogatory he answers: J. P. Legg. I reside at Marietta, Georgia, and am a merchant and cotton buyer.

To the 2nd interrogatory he answers: I have lived here for 12 years and have been engaged in this business for that time.

To the 3rd interrogatory he answers: They do.

To the 4th interrogatory he answers: Adairsville, Calhoun, Kennesaw, Cartersville, Acworth, are localities beyond Marietta from Atlanta at distances ranging from 12 to 70 miles, at which Atlanta merchants do business, and goods shipped to these points from Atlanta have to be hauled through Marietta over the W. & A. R. R.; and Canton, Woodstock, Holly Springs, Tate, Jasper, and Ellijay, are points on the A., K. & N. R. R. that are beyond Atlanta from Marietta at distances ranging from 12 to about 70 miles, and goods shipped from Atlanta to these points have to be hauled to Marietta on the W. & A. R. R. and then over the A., K. & N. R. R.

To the 5th interrogatory he answers: They can not compete with the merchants of Atlanta successfully in territory named, on account of the freight rates discriminating in favor of Atlanta.

To the 6th interrogatory he answers: They can not.

To the 7th interrogatory he answers: It results from the fact that the freight rates favor Atlanta as against Marietta.

To the 8th interrogatory he answers: The Marietta rate from Western and Eastern sources of supply is the through rate to Atlanta plus the local rate from Atlanta to Marietta.

To the 9th interrogatory he answers: This discrimination has existed ever since I have known anything of business here—I don't know for how much longer—and has retarded the growth of Marietta, as she can not compete with Atlanta and can not offer the inducements to capital that Atlanta can offer.

To the 10th interrogatory he answers: When goods are shipped from Cincinnati and other Western and Eastern sources of supply, they are shipped under a through bill of lading and are brought through to Marietta in the cars in which they are loaded originally. Marietta merchants buy goods direct at Cincinnati and other sources of supply.

To the 11th interrogatory he answers: The population of Marietta is about 5,000. We have planing mills, knitting mills, machine shops, paper mills, batt mills, marble mills, all shipping to and from Marietta over the W. & A. R. R.

To the 12th interrogatory he answers: They do.

To the 13th interrogatory he answers: It would be obliged to lower prices.

To the 14th interrogatory he answers: It is my experience that more goods are sold when goods are cheap.

To the 15th interrogatory he answers: It would certainly not diminish the tonnage of goods hauled. It would have a tendency to increase it, as there would be apt to be more goods consumed, as they could be sold cheaper.

To the 16th interrogatory he answers: Relatively low freight rates have a tendency to build up a locality, as it can offer inducements to capital to come to such a place.

To the 17th interrogatory he answers: High rates retard the progress of any locality, as it tends to drive away both capital and population to other places where better advantages can be secured.

To the 18th interrogatory he answers: All we want is equalized freight rates with other localities on the same road. Our natural advantages are good, but we will always be at a disadvantage when goods can be
126 hauled from Cincinnati through Marietta to Atlanta for a less rate of freight than they can be brought to Marietta from the same place.

J. P. LEGG.

Answers of H. C. Dobbs.

The witness, H. C. Dobbs, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers: H. C. Dobbs. I reside at Marietta, Georgia, and am engaged in the hardware business.

To the 2nd interrogatory he answers: I have been here all of my life, and been in the hardware business about 11 years.

To the 3rd interrogatory he answers: They do.

To the 4th interrogatory he answers: Kingston, Cartersville, Acworth, Kennesaw, Calhoun, and Adairsville are points beyond Marietta from Atlanta at distances from 7 to 70 miles, at which Atlanta merchants do business, and goods shipped from Atlanta to these points have to be hauled over the W. & A. R. R. and through Marietta.

To the 5th interrogatory he answers: I do, for one, attempt to sell goods around Marietta, and in doing so come in competition with Atlanta merchants. Atlanta competition is the strongest competition.

To the 6th interrogatory he answers: They can not.

To the 7th interrogatory he answers: The disadvantage results from the discriminating freight rates in favor of Atlanta and against Marietta.

To the 8th interrogatory he answers: Take nails; Atlanta merchant can buy nails at Cincinnati and haul them to Atlanta through Marietta and reship them back to Marietta and sell them at the same that I can, when I buy at the same place and in carload lots. They can compete with me here and points around here just as if they did business
127 in the same town with me, yet Atlanta is 20 miles further away from Cincinnati than Marietta is.

To the 9th interrogatory he answers: It has existed ever since I have been in business, and I don't know how much longer, and this has had the effect of retarding the growth of our town. We ought to have a population of from 10 to 15 thousand, while we only have about 5,000. The discriminating freight rates drive away both capital and population.

To the 10th interrogatory he answers: When merchants of Marietta buy goods in Cincinnati they are shipped through under a through bill of lading, and a rate is named to Marietta, a through rate, and there is no transfer or breakage of bulk—the goods come in the cars in which they were originally loaded.

To the 11th interrogatory he answers: Marietta has a population of about 5,000, and has two planing mills, knitting mills, marble mills, paper mills, machine shops, batt mills, chair factories, etc.

To the 12th interrogatory he answers: They do.

To the 13th interrogatory he answers: Such a reduction as is named in this interrogatory would lower prices at which goods could be sold to consumers at Marietta.

To the 14th interrogatory he answers: My experience is that more goods are sold when prices are cheap.

To the 15th interrogatory he answers: I believe the tonnage will be increased by lowering the freight rates, as it will enable the merchants along the line of the railroad to do more and larger business, as more goods are sold when goods are cheap. I do not believe that the railroads would lose anything by reducing rates so as to make all localities on an equality in the freight rates. What I mean is not to haul goods through a town to another place from the same place for less than the same goods can be carried to the first place mentioned.

To the 16th interrogatory he answers: Low rates to a place
128 tends to increase the manufacturing interests there, and invites capital and thus helps to build up the place; it will enable a particular place to compete with other places along the same line of railroad, and so promote to the prosperity of the place.

To the 17th interrogatory he answers: Relatively high rates to a locality tend to drive away capital and also population, and hinder prosperity. I know of a factory that moved from Marietta to Atlanta on the same line of the same railroad it was already on because of the big difference in freight rates in favor of Atlanta and against Marietta. A man who wanted to build a factory of any kind would not be apt to go to a place where there were high freight rates if he could find a place where the rate was very much lower. It is this way with Marietta and Atlanta; one has a high rate, the other a low rate, and it has caused a great many of the citizens of Marietta to move to Atlanta to do business, or to live here and do business in Atlanta.

To the 18th interrogatory he answers: I think of nothing else at present that will be of benefit to the parties at issue.

H. C. DOBBS.

I, George D. Anderson, of Marietta, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the said witnesses, to wit, W. L. Sessions, D. N. Anderson, J. P. Legg, and H. C. Dobbs, and after having duly sworn them to speak the truth, the whole truth and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses. This the 2nd day of October, 1897.

GEO. D. ANDERSON, *Commissioner.*

[Indorsements on envelope.]

To O. C. Fuller, esq., clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Georgia.

Atlanta, Ga. Received by due course of mails, this 5 day of Oct., 1897. Amos Fox, P. M.

Received from the hands of the postmaster at Atlanta, Ga., and filed this 5 day Oct., 1897. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Jesse M. Smith, of Washington, D. C.

Interrogatory No. 1. What is your name, residence and occupation?

Interrogatory No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position and what, if any, was your previous position with the Commission and how long you occupied that?

Interrogatory No. 3. In what business were you engaged before entering into the service of the Commission? How long were you so engaged and in what part of the country?

Interrogatory No. 4. Are schedules of rates, fares, and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the Commission, and is it not one of your duties as auditor to examine such tariffs?

Interrogatory No. 5. From your examination of such schedules of rates, fares, and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

Interrogatory No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi River and
130 south of the Ohio and Potomac rivers, state whether or not it is the rule in that territory in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory.

Interrogatory No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law and prior thereto?

Interrogatory No. 8. Does this practice exist to any considerable extent in eastern or trunk line territory?

Interrogatory No. 9. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever to your personal knowledge been made in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, except in cases of competition in transportation to the longer distant point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

Interrogatory No. 10. Under what classification are the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth,

Maretta and Atlanta, made? What is the minimum carload weight prescribed in that classification?

Interrogatory No. 11. Give a tabular statement showing the class rates that were in force in 1892, and that are now in force from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta and Atlanta, and showing the excess of the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, on each class over the rates to Atlanta.

Interrogatory No. 12. Give a tabular statement showing the excess of the first-class rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, over the class rates to Atlanta per minimum carload.

131 Interrogatory No. 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination.
Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Stipulation as to depositions of Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for Defendants.

Filing: Filed in clerk's office 27 Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

132 *Answers of Jesse M. Smith.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
In equity, No. 524.

Depositions of Jesse M. Smith, a witness for the complainant in the above-entitled cause.

The said witness, Jesse M. Smith, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

Answer to interrogatory No. 2: I have occupied that position since July 1, 1895: from January 1, 1888, to July 1, 1895, I was assistant auditor of the Commission.

Answer to interrogatory No. 3: I was engaged in railroad work for about fourteen years prior to entering the service of the Commission, most of the time in the general freight department of the Louisville & Nashville Railroad, at Louisville, Ky., and Montgomery, Ala.

Answer to interrogatory No. 4: Common carriers are required to file with the Commission all schedules of rates, fares, and charges applying on interstate traffic. All of such schedules are placed on file in the office of the auditor of the Commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable, all schedules of rates, fares, and charges filed in compliance with section six of the act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the Commission.

133 Answer to interrogatory No. 5: From the large number of tariffs examined since the beginning of my service with the Commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers.

Answer to interrogatory No. 6: I am of the opinion that the practice referred to prevails as a rule in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory, though there are, no doubt, some exceptions.

Answer to interrogatory No. 7: To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning of my railroad service. It was in existence in the year 1887 and, as above indicated, prior thereto.

Answer to interrogatory No. 8: This practice does not prevail to any considerable extent in the territory east of the Mississippi River and north of the Ohio and Potomac rivers.

Answer to interrogatory No 9: I have no personal knowledge of any case where the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer distance point. I believe the lower charge to the longer distance point has, in practically all cases, been made on the ground of competition in transportation to such longer-distance point, either direct competition in transportation from and to the same points, or competition with carriers operating from other markets to same point of destination.

Answer to interrogatory No. 10: The rate from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Ga., are subject to the Southern freight classification. This classification provides that unless otherwise specified in the classification
the minimum carload weight of all articles loaded in cars 36 feet in
134 length or less shall be 24,000 pounds, or twelve tons when the rate
applies per net or gross ton. For cars over 36 feet in length the minimum carload weights are provided in proportion to length of the car. Special minimum carload weights are provided in the classification for quite a large number of articles, the lowest being 10,000 pounds.

Answer to interrogatory No. 11: The class rates in force in 1892, also the present rates, from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Ga., are shown in the following table.

Class rates from Cincinnati, Ohio, to points named below.

[In cents per hundred pounds.]

	Classes.												Per bbl.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga.:													
1892	109	95	84	71	59	44	34	40	32	27½	53	57	56
1897	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville, Ga.:													
1892	112	98	86	73	60	45	35	41	32½	28	54	59	57
1897	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston, Ga.:													
1892	115	101	88	75	61	46	36	42	31½	27	55	61	55
1897	115	101	88	75	61	46	36	42	33	28	55	61	58
Cartersville, Ga.:													
1892	118	103	90	76	62	47	37	43	34	29	56	62	59½
1897	118	103	90	76	62	47	37	43	33½	28½	56	62	59½
Acworth, Ga.:													
1892	124	107	94	78	64	49	39	45	35	30	58	64	61
1897	124	107	94	78	64	49	39	45	34	29½	58	64	60½
Marietta, Ga.:													
1892	127	109	96	79	65	50	38	45	35	30	58	65	62
1897	127	109	96	79	65	50	38	45	35	30	58	65	62
Atlanta, Ga.:													
1892	107	92	81	68	56	46	28	35	28	24	48	53	48
1897	107	92	81	68	56	46	28	35	28	24	48	53	48

135 The rates from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are higher than the rates to Atlanta, as follows:

[In cents per hundred pounds.]

	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.
Calhoun	2	3	3	3	3	...	6	5	4	5	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5	4	7	8	10
Cartersville	11	11	9	8	6	1	9	8	5½	4½	8	9	12½
Acworth	17	15	13	10	8	3	11	10	6	5½	10	11	15½
Marietta	20	17	15	11	9	4	10	12	7	6	10	12	14

Answer to interrogatory No. 12: The excess of the rate on the first six classes from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Ga., over the rates on same classes from Cincinnati to Atlanta, Ga., are, in dollars and cents, per carload of 24,000 pounds, as follows:

	Classes.					
	1.	2.	3.	4.	5.	6.
Calhoun	$4.80	$7.20	$7.20	$7.20	$7.20	.....
Adairsville	12.00	14.40	12.00	12.00	9.60	.....
Kingston	19.20	21.60	16.80	16.80	12.00	.....
Cartersville	26.40	26.40	21.60	19.20	14.40	$2.40
Acworth	40.80	36.00	31.20	24.00	19.20	7.20
Marietta	48.00	40.80	36.00	26.40	21.60	9.60

Answer to interrogatory No. 13: I know of nothing further that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that is material to the subject of this examination.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, Jesse M. Smith, and after having duly
136 sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witnesses. This the 26th day of August, 1897.

EUGENE L. GADDESS,
Commissioner.

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Registered August 26, 1897, Washington, D. C., Station C. No. 2092. Atlanta, Ga. Received by due course of mails this 28 day of Aug., 1897. Amos Fox, P. M.

Received this package from the hands of Amos Fox, P. M., at Atlanta, Ga., & filed Aug. 28, 1897. O. C. Fuller, clerk. By Geo. S. Barnard, deputy clerk.

Interrogatories to Allen Foot.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
In equity, No. 524.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Allen Foot.

Interrogatory No. 1. What is your name and residence, and what position, if any, do you hold under the State of Georgia?

Interrogatory No. 2. How long have you held such position? Have your duties as a member of the railroad commission of Georgia required you to study and made you familiar with the railroad situation in that State? Had your attention been called to the transportation question prior to your becoming a member of the Georgia Railroad Commission, and if so, how and for how long a time?

Interrogatory No. 3. Were the rates in force in 1892, and now in
137 force from Atlanta, Georgia, to the following stations on the Western & Atlantic road between Atlanta and Chattanooga, to wit: Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun .....established by the railroad commission of Georgia? Were the rates from Chattanooga..... in force in 1892, and now in force to those stations, established by the railroad commission of Georgia?

Interrogatory No. 4. Name the rates in force in 1892, and now in force, from Atlanta to those stations. Name the rates in force in 1892, and now in force, from Chattanooga to those stations.

Interrogatory No. 5. In establishing the rates named in the preceding interrogatory, did the railroad commission of Georgia take into consideration the fact that the expense to the carrier of the service of carriage on local hauls in less than carload lots is greater per ton per mile than on long through hauls?

Interrogatory No. 6. Has the railroad commission of Georgia any authority or does it attempt to exercise any authority in establishing the through rates on interstate commerce or any proportions of such rates?

Interrogatory No. 7. Is it your opinion that the prosperity of a road is promoted more by a system of rates which builds up business at local stations along its entire line, or by a system which discriminates against such local stations and tends to build up business at widely separated trade centers alone?

Interrogatory No. 8. Have the effects of the former or latter system of rate making referred to in the preceding interrogatory come under your observation on any roads in the State of Georgia or elsewhere? And if so, state fully what those effects were.

Interrogatory No. 9. Are the geographical positions of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun and the character of the territory by which they are surrounded such that they are

capable of no further growth? What effect, if any, would the reduction of the rates from Cincinnati.....

138 to those points so as to make their rates not higher than the rates to Atlanta have on the prosperity and growth of those points?

Interrogatory No. 10. Will a reduction in the rates on all classes of goods from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun..... so as to make their rates not higher than the rates for the haul through those points to Atlanta..... in your opinion increase or diminish the tonnage of traffic which will be hauled by the roads to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun?

Interrogatory No. 11. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and in inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 12. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 13. State whether or not Atlanta or Chattanooga merchants compete for business or sell goods in the territory adjacent to and surrounding Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun.

Interrogatory No. 14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

139 *Stipulation as to deposition of Allen Fort.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
} In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Allen Fort, of Atlanta, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All

formal objections are waived. It is further stipulated and agreed that J. D. Massey, of Atlanta, Ga., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

ED. BAXTER,
Counsel for the Defendants.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

Filing: Filed in clerk's office 27 day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Answers of Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

The witness, Allen Fort, having been first by me duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To interrogatory No. 1, witness answering says: That his name is Allen Fort; his residence at Americus, Georgia; that he is one of the railroad commissioners of Georgia; that he has held said position for about six years.

140 To interrogatory No. 2, witness answering says: That he has been railroad commissioner of Georgia since October 16th, 1891; that his duties as such railroad commissioner require him to study and become familiar with the railroad situation in Georgia; that prior to his accession to the commission he had given considerable thought to the transportation question; that as a member of the Georgia legislature during the years 1877, 1878, 1879, and 1880 it became his duty to investigate the subject in order that he might intelligently vote on pending legislation organizing the railroad commission of Georgia, and otherwise affecting railroad transportation in Georgia.

To interrogatory No. 3, witness answering says: The authorized rates in force in 1892, and rates now in force, from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun were and are those established by this commission.

To interrogatory No. 4, witness answering says: That the authorized rates in force from Atlanta to said stations in 1892, and authorized rates now in force from Atlanta to said stations, may be found on pages 114 and 115, in connection with distance table on page 145 of the twentieth report of the railroad commission of Georgia, said rates not having been changed since 1882. A copy of said report is made a part of this answer. As to rates from Chattanooga, that city not being in Georgia, this commission has no control over rates from same.

To interrogatory No. 5, witness answering says: They did.

To interrogatory No. 6, witness answering says: That they did not and do not.

To interrogatory No. 7, witness answering says: In my opinion, the prosperity of the roads is greatly promoted by a system of rates which build up business at local stations along their entire lines, and that their property is greatly injured by a system which discriminates against local stations and tends to build up business at widely separated "trade centers" alone. At the local stations, where the roads get the entire business, by granting just rates they would increase their tonnage from these stations, thereby securing an improved, permanent business, not competitive. Such a course would foster friendly relations between
141 the people and the roads, and in a number of ways benefit the roads and promote their prosperity.

To interrogatory No. 8, witness answering says: I have observed the effects of rate-making systems which build up business at local stations, and have found that the roads so doing were uniformly more prosperous and their business more reliable; while, on the other hand, roads pursuing the opposite policy of discriminating against their noncompetitive stations have not been prosperous. This kind of oppression has promoted the construction of competing lines, often where the legitimate trade did not warrant it.

To interrogatory No. 9, witness answering says: The geographical positions of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and the territory by which they are surrounded, are such that they are capable of further growth; and if rates from Cincinnati were not higher to those points than rates to Atlanta from Cincinnati, in my opinion their prosperity and growth would be promoted.

To interrogatory No. 10, witness answering says: In my opinion a reduction in rates from Cincinnati to those stations, so as to make said rates not higher than rates charged for the haul through those points to Atlanta, would increase the tonnage of traffic hauled by the roads to said points.

To interrogatory No. 11, witness answering says: Relatively low and preferential rates to a particular locality, if such rates are stable, would tend to increase the population of such locality and induce the investment of capital there, and would promote the prosperity of such locality. It would build up manufacturing, cause jobbing houses to be established, and increase the trade of such locality by extending its territory.

To interrogatory No. 12, witness answering says: Relatively high rates to a locality, which discriminates against it, would have the opposite effect from that stated in the foregoing answer. The margin of profit is so small now in commercial transactions that a discriminating rate against a locality makes manufacturing and jobbing unprofitable; and a locality so discriminated against can not hold the trade in its own legitimate territory; but more favored localities secure the trade, and are
built up at the expense of the less favored.

142 To interrogatory No. 13, witness answering says: I presume that Atlanta merchants do compete for business and sell goods in the territory adjacent to and surrounding said stations; to what extent I am unable to say.

To interrogatory No. 14, witness answering says: Nothing else of benefit to the parties at issue in this case, or either of them, material to the subject-matter of this examination occurs to me at this time.

ALLEN FORT, *Deponent.*

I, J. D. Massey, of Atlanta, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, to-wit, Allen Fort, and after having first sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witness. I do certify further that the twentieth report of the railroad commission of Georgia herein inclosed is the same referred to by witness aforesaid, and by him made a part of his answer, as herein set out.

This 29th day of September, 1897.

J. D. MASSEY, *Commissioner.*

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Received of J. D. Massey, com'r., this package, this 30 day of September, 1897.

O. C. Fuller, clerk.

143 [Extracts from 20th report railroad commission of Georgia.]

Standard freight tariff—Classes.

Distance.	Per 100 pounds.											Per bbl..	Per 100 lbs..	Per 100 lbs..
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	**30**	**27**	**25**	**22**	**18**	**13**	**13**	**13**	**8½**	**8**	**18**	**17½**	**7**	**22**
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	**45**	**40**	**35**	**30**	**23**	**18**	**18**	**18**	**11½**	**11**	**23**	**23**	**8½**	**30**
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	**60**	**50**	**45**	**35**	**28**	**23**	**23**	**23**	**14**	**13**	**28**	**28**	**9**	**35**
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

144 (Extracts from 20th report railroad commission of Georgia—Continued.)

Standard freight tariff—Classes—Continued.

Distance.	Per 100 pounds.												Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**35**	**9¼**	**10**
210	71	62	51	41	33	28	28	28	17	16	33	34	9¼	10
220	72	64	52	42	33	28	28	28	17	16	33	34	10	10
230	73	66	53	43	34	**29**	29	29	18	17	34	36	10¼	10
240	74	68	54	44	34	29	29	29	18	17	34	36	10¼	10
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**10**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	10
270	77	71	56	46	36	31	31	31	20	19	36	40	10¾	10
280	78	72	57	47	36	32	32	32	20	19	36	40	10¾	10
290	79	72	57	47	37	32	32	32	21	19	37	42	10¾	10
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**10**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	10
320	82	74	59	49	39	34	34	34	21	20	39	42	11	10
330	83	74	59	49	39	34	34	34	22	20	39	44	11	10
340	84	74	59	49	39	34	34	34	22	20	39	44	11	10
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**10**
360	85	75	60	50	40	35	35	35	23	21	40	46	11¼	10
370	85	75	60	50	40	35	35	35	23	21	40	46	11¼	10
380	88	76	61	51	41	36	36	36	25	23	41	50	11¼	10
390	88	76	61	51	41	36	36	36	25	23	41	50	11¼	10
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**10**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
430	91	77	62	52	42	37	37	37	26	24	43	52	11¾	10
440	94	78	63	53	43	38	38	38	27	25	43	54	11¾	10
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11¾**	**10**
460	94	78	63	53	43	38	38	38	27	25	42	54	12	10

145 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.50	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6⅝	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7¼	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**9**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	23.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	22
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	23
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	23
320	47	17	3.05	3.20	38.00	26.00	24.00	24
330	48	17	3.15	3.30	38.50	27.00	25.00	24
340	49	17	3.15	3.40	39.00	27.00	25.00	24
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	26
390	54	18	3.41	3.60	42.00	29.00	27.00	26
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**26**

146 [Extract from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes—Continued.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
410	**56**	**19**	**3.54**	**3.70**	44.00	31.00	29.00	28
420	57	19	3.54	3.70	44.00	31.00	29.00	28
430	58	19	3.54	3.70	44.00	31.00	29.00	28
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

UNION POINT AND WHITE PLAINS R. R.

Passenger, Class A, (three cents per mile).
Freight: Apply commissioners' standard tariff to all classes.

Distance table.

Union Point	0	Caldwell	5	Jarrells	12
Junction	2	Siloam	7	White Plains	14

WADLEY AND MT. VERNON RAILROAD COMPANY.

Passenger, Class B, (four cents per mile).
Freight: On classes 1, 2, 3, 4, 5, 6, A, B, E, H, and K, commissioners' standard tariff with 50 per cent added.
On Classes G, L, M, N, O, and R, commissioners' standard tariff with 20 per cent added.
On Classes C, D, F, J, and P, commissioners' standard tariff.
On rosin, Class K, less 20 per cent.

Distance table.

Wadley	0	Hods	17	Adrian	27
Pinetucky	6	Ethel	22	Ricksville	29
Kite	15	Odomville	25		

147 [Extracts from 20th report Railroad Commission of Georgia—Continued.]

WESTERN & ATLANTIC R. R.

Passenger, Class A (three cents per mile).
Freight: Apply standard tariff to all classes.

Distance table.

Atlanta	0
Bolton	7
Gilmore	10
Vining's	11
McIvor's	12
Smyrna	15
Marietta	20
Elizabeth	22
Big Shanty	29
Acworth	35
Ruby	37
Allatoona	40
Bartow Iron Works	42
Stegall's	43
Cartersville	48
Roger's	51
Cass	53
Kingston	59

Cement 60
Hall's 64
Adairsville 69
McDaniel's 75
Calhoun 78
Resaca 84
Tilton 91
DALTON 100
Mont Lily 104
Tunnell Hill 107
Ringgold 115
Graysville 121
Chickamauga, Tenn 127
CINCINNATI JC., TENN 132
CHATTANOOGA, TENN 138

148 In the circuit court of the United States for the northern district of Georgia, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Frank Lyon, stenographer, 1317 F St. NW., Washington, D. C.

In the circuit court of the United States for the northern district of Georgia, at Atlanta, Ga.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

In this case it is stipulated and agreed by counsel for complainant and counsel for defendants that Frank Lyon, stenographer, shall act as special examiner, with all the powers of such, to take the depositions of such witnesses in this case as may be produced before him by defendants.

It is further stipulated and agreed that he shall take the testimony of such witnesses in shorthand and afterwards reduce the same to typewriting and certify that his report of the testimony is full, true, and correct. The signatures of the witnesses to their testimony and all formal caption and certificate are expressly waived.

June 22nd, 1897.

(Signed)

L. A. SHAVER,
Counsel for Complainant.

ED. BAXTER,
Counsel for Defendants.

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Knox, G. R.	148	165	.....	.....	.....
Lutz, R. E.	119	123	.....	.....	.....
Thompson, J. R.	62	65	67	68	69
Winburn, W. A.	131	137	.....	.....	.....
Van den Berg, Y.	1	12	29	31	.....

149 EXHIBITS.

Exhibit No. 1. Filed by J. M. Culp, p. 61. Articles of agreement of the Southeastern Freight Association.

Exhibit No. 2. Filed by J. R. Thompson, p. 63. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893.

Exhibit No. 3. Filed by J. R. Thompson, p. 63. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.

Exhibit No. 4. Filed by J. R. Thompson, p. 65. Articles of agreement of Southern States Freight Association.

Exhibit No. 5. Filed by J. R. Thompson, p. 65. Articles of agreement of the Southern Railway & Steamship Association.

Exhibit No. 6. Filed by J. M. Brown, p. 72. Pages 64 to 67, 124, 126 to 130 from 23rd annual report of the R. R. Com. of Ga., from October 15, 1894, to October 15, 1895.

Exhibit No. 7. Filed by G. R. Knox, p. 162. Comparatives statement of receipts and disbursements on the Western & Atlantic Railroad.

Case No. 40.

FORT MONROE, VA., *June 22nd, 1897.*

Y. VAN DEN BURG, a witness called by and on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. Y. van den Burg; 41 years; reside in Louisville, Ky.; traffic manager of the Louisville & Nashville Railroad.

2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Since 1880.

3. Q. In this case the Interstate Commerce Commission ordered the defendant to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun,
150 Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order

may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, etc	2	3	3	3x	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The effect of the reductions would be loss of revenue to the carriers to the full extent of the reductions, and it would not be offset to any degree by the increase of tariff.

The two extreme points mentioned—Calhoun on the one side and Marietta on the other—are 58 miles apart. There are stations intermediate other than those mentioned in the complaint—namely, McDaniels, Cass, Emerson, and Kenesaw. The distance between these points varies from three to eight miles. Reductions to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta involve reductions to McDaniels, Cass, Emerson, and Kenesaw.

With a reduction of these rates, the rates to points on other lines running parallel with the Western & Atlantic road—namely, the Southern Railway on the one side and the Atlantic, Knoxville & Norfolk on the other, would be correspondingly reduced. So that the difference as between one Western & Atlantic point and another Western & Atlantic point, and between any Western & Atlantic point and points opposite on parallel lines, would remain the same. *The* other words, each point would hold the trade it now has. They simply supply a local demand and a local consumption, and the local demand can not be increased by reduction in rates.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

151 From Cincinnati to—	Mi.	1.	2.	3.	4.	4.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	50	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth	459	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates just and reasonable for the reason that they are fixed upon the lowest obtainable combination, Chattanooga, Rome, or Atlanta governing, as the case may be. In other words, the traffic to these local stations has the benefit of whatever competition may have compelled the present adjustment of rates to Atlanta, Rome, and Chattanooga. These rates are also lower than prevail in some of the other sections of the country and lower than can be obtained by any other means of transportation.

5. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati Southern road, the Louisville & Nashville road, by two different routes, the Baltimore & Ohio Southwestern in connection with its lines via Louisville and thence the Illinois Central and Memphis and the Charleston, from Memphis, the Ohio and Mississippi River boats in connection with the Tennessee River steamers.

6. Q. The distance from Cincinnati to Chattanooga is 356 miles and the rates from Cincinnati to Chattanooga are as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

State whether in your opinion said rates are just and reason-
152 able or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates to Chattanooga just and reasonable. They have been arrived at by traffic experts after years of experience and have been effective since August, 1884. Under that adjustment, Cincinnati has been able to sell its wares and products in Chattanooga, and Chattanooga has built up an important distributing trade.

7. Q. Name the transportation lines, all rail or all water, or part rail and part water, that actively and actually competed in 1892 and now compete as well as from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1/2, 3/4, 5, 6, A, B, C, D, E, H, F classes.

A. The following lines actually and actively compete for traffic from Cincinnati and points enumerated for transportation of all classes of freight and commodities to Atlanta:

The Cincinnati Southern by three different routes; the Louisville and Nashville by five different routes; the Baltimore & Ohio Southwestern by five different routes.

From Louisville: The Louisville & Nashville by three different routes; the Southern Railway by two different routes; the Illinois Central by five different routes.

From Evansville and Henderson: The Louisville & Nashville by three different routes; the Ohio Valley, in connection with the Illinois Central, via five different routes.

From Paducah: The Nashville, Chattanooga & St. Louis via three different routes; the Illinois Central via five different routes.

From Cairo: The Nashville, Chattanooga & St. Louis via three dif-

ferent routes; the Illinois Central via six different routes; the Mobile and Ohio via eight different routes.

As to lines actually and actively competing to Atlanta on all classes of commodities from sections other than the Ohio River crossings, they are too numerous to specify. However, there are:

153 The Baltimore & Ohio Southwestern, the Cincinnati and Muscogee, the Cincinnati and Westward, the Cincinnati, Georgetown and Portsmouth, the Cincinnati, Hamilton and Dawson, the Cincinnati, Jackson and Mackinaw, the Cincinnati, Lebanon & Northern, the Cincinnati Northwestern, the Cincinnati, Portsmouth & Virginia, the Cleveland, Cincinnati, Chicago and St. Louis, the Erie Railroad, the Pennsylvania Railroad.

These are terminal lines at Cincinnati, reaching that point from the north, east, or west.

The Chicago, Indianapolis & Louisville; the Baltimore & Ohio Southwestern; the Cleveland, Cincinnati, Chicago & St. Louis; the Pennsylvania Railroad; the Louisville, Evansville & St. Louis; the Louisville, Henderson and St. Louis.

These are terminal lines at Louisville, reaching that point from the north, east, or west.

The Louisville & Nashville; the Evansville and Terre Haute; the Louisville, Evansville & St. Louis; the Peoria, Decatur and Evansville.

These are terminal lines at Evansville, with the bridge transfer at Henderson, reaching those points from the north or west.

The Illinois Central is the terminal line at Paducah from the north, west, or east.

The Cleveland, Cincinnati, Chicago & St. Louis; the Illinois Central; the Mobile and Ohio; the St. Louis, Iron Mountain and Southern; the St. Louis and Southwestern.

These are terminal lines at Cairo, reaching that point from the north, east, or west.

All these lines with terminals at Cincinnati, Louisville, Evansville, Henderson, Paducah and Cairo, compete in connection with lines running south from these Ohio River crossings, for all Atlantic traffic originating on their lines or through their connections, to the territory east and north of them, and west of them as far as the Pacific coast.

8. Q. State whether or not the Louisville and Nashville Railroad Company and its connections actually and actively compete for the carriage of freight of various classes to Atlanta; if so, from what cities?

A. The Louisville & Nashville Railroad and its connections actually and actively compete for the carriage of freight of various classes to Atlanta, and from all territories described in the preceding answer. Likewise do we compete direct or through our connections from cities or territories located west of the Louisville & Nashville road, and south of the Ohio River.

9. Q. State whether or not your railroad or its connections have agents at said cities to solicit freight for transportation to Atlanta?

A. The Louisville & Nashville Railroad or its connections
154 have agents at all the cities and territories previously described to solicit freight for Atlanta.

10. Q. State whether or not your railroad has, or its connections, advertised at said cities for the transportation of freight to Atlanta?

A. The Louisville & Nashville Railroad or its connections, through the means of tariffs and other publications, advertised for freight from cities and territories mentioned to Atlanta.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia Railroad Commission from the Georgia sea coast to Atlanta taken into consideration?

A. In making the rates from the Eastern seaboard cities to Atlanta, the coast-wise competition by steam and sailing vessels to Charleston, Savannah and Brunswick, added to the rates from the ports, are a factor.

12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so, to what, extent by competition?

A. Yes, sir; they are entirely controlled by competition, both as between carriers from the same markets, as well as carriers from other markets.

13. Q. State whether the number of tons carried one mile or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, can be used either separately or jointly as the standard in railroad rate making, and state your reasons for it?

A. The items can not be used as a standard for railroad rate making in fixing an adjustment of rates between any two or more points; rates have to be made on all classes of freight so as to cover anything that might be offered for transportation, and not knowing the tonnage that will move under each class or the aggregate tonnage that will be moved under all classes, or the percentage the aggregate tonnage stands to the total tonnage of the road, it is impossible to consider the rate per ton per mile or the average receipts per ton per mile in fixing rates between any two or more points; and independent of this competition compels the carrier frequently to fix rates without regard to any one or more of the specific items of your inquiry.

14. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which transportation of freight is conducted?

A. The competition between carriers, whether by rail or by
155 water, substantially affects the circumstances and conditions under which transportation is effected. As an illustration, the short line from Cincinnati to Atlanta is 475 miles. The route by the Louisville & Nashville Railroad from Cincinnati to Atlanta, via Nashville & Chattanooga, is 684 miles. The route by the Baltimore & Ohio Southwestern in connection with the Illinois Central, via Memphis and the Illinois Central Railroad, is 833 miles. In other words, the Louisville & Nashville road has to take the transportation from Cincinnati to Atlanta for its 684 miles, and the Baltimore & Ohio Southwestern, in connection with the Illinois Central, for its 883 miles at no greater gross revenue than realized by the Cincinnati Southern for its 476 miles.

15. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as there is at Atlanta.

A. Calhoun, Adairsville, Kingston, Cartersville, &c., are reached only

by the Western & Atlantic Railroad. Still, so far as the carriage of freight is concerned up to the base point, Atlanta, Rome, or Chattanooga, the traffic is competitive, whether destined to these local stations as when consigned to the base point proper.

16. Q. State whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad are under any common control or management; and if so, what is it?

A. Those roads are not under any common control or management.

17. Q. I believe it is true that the Louisville & Nashville Railroad has a majority of the stock of the Nashville, Chattanooga & St. Louis Railway?

A. I have so understood, but I do not know that it has of my own knowledge.

18. Q. It is also true that the Nashville, Chattanooga & St. Louis leases the Western & Atlantic Railroad?

A. Yes, sir.

19. Q. But otherwise than that the Louisville & Nashville owns the majority of the stock of the Nashville, Chattanooga & St. Louis Railway, and that the Nashville, Chattanooga & St. Louis Railway leases the Western and Atlantic Railroad, there is no common control or management?

A. No, sir; the Nashville, Chattanooga & St. Louis Railroad is as active a competitor as we have.

Cross-examination by Mr. SHAVER:

1. Q. You stated in answer to the first direct interrogatory
156 that if the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were reduced as named in said interrogatory, that it would be an absolute loss of revenue to the road?

A. Yes, sir.

2. Q. And you also stated that a reduction in the rates to these points would not increase the tonnage of traffic transported to those points and thereby increase the revenue of the road?

A. Yes, sir.

3. Q. You gave as one reason for this that the rates from points on parallel lines would have to be correspondingly reduced. Suppose the rates to these points were reduced, named in the interrogatory, and the Atlanta rate remained the same, would that not include the position of these points as related to Atlanta?

A. Now, Mr. Shaver, do you mean reduce the Western & Atlantic points without reducing the rates on the parallel lines?

4. Q. No; without reducing the rate to Atlanta.

A. Without reducing the rate to Atlanta, unquestionably, reducing the rate to Cincinnati to the Western & Atlanta points would be injurious to Atlanta.

5. Q. Would it not benefit these points?

A. No, sir. There is just so much consumed in the communities immediately around each of these local stations that you have mentioned. A reduction in the rate would not draw to these points an additional barrel of sugar or an additional barrel of meat or any other article that is consumed by the communities at those points.

6. Q. How would the reductions, then, of these rates to intermediate points injure Atlanta without reducing the Atlanta rate, leaving that the same?

A. It would injure Atlanta in that the part of the traffic now drawn from Atlanta, that being a distributing point, for points on the Western & Atlantic road, for a portion of the Western & Atlantic road might go somewhere else.

7. Q. Under the present system of relatively higher rates to these intermediate points that to Atlanta, cannot Atlanta merchants compete with the merchants at these intermediate points and sell goods at those points and in the surrounding territory?

A. Atlanta merchants sell to merchants at those points.

8. Q. If the rates from Cincinnati to these intermediate points were no higher than the Atlanta rates, would the Atlanta merchants then sell goods at these points in competition with merchants residing there?

A. I question that. I think the large amount of the traffic
157 would be diverted to Cincinnati or other points against Atlanta.

9. Q. Do not these merchants at these intermediate points now largely get their goods from Cincinnati?

A. I fancy they do to some extent.

10. Q. Do not rates have an effect upon the prosperity—business prosperity of a locality—that is, whether they be high or low?

A. It is possible to make rates that will absolutely prevent the development of a section of country. There is no doubt about that.

11. Q. If there are two localities, one having relatively lower rates than another, would not that induce the establishment of industrial enterprises at the place having the relatively lower rate rather than at the place having the relatively higher rate, other things being equal?

A. You speak of industries—you mean manufacturing plants?

12. Q. Yes.

A. That depends entirely upon what sort of a factory it is; what raw material it would use; where it would draw its raw material from.

13. Q. If the rates on that raw material was relatively lower from one point than to another, would not the factory be more like to go to the one which had the lower rate?

A. Not necessarily. It would depend on the rates on the product out. I fancy if a factory has the selection of two points, the rates on the raw material in the one point and the rates on the product out being lower than the rates on the raw material in the other point and the product out, that it would naturally locate where the cheapest rates are. That depends largely, of course, as to what market they have to supply.

13. Q. Cheap rates then have an influence in building up a locality, have they not?

A. They have where you make rates on the articles that are manufactured. It has not when you make rates simply on the consumption of a community—the class of freight involved in this case. As I understand it, it simply covers the consumption of articles.

14. Q. Atlanta merchants trade in the territories intermediate between Chattanooga and Atlanta, do they not?

A. Yes, sir; to some extent, I think.

15. Q. Is there not another road leading to Kingston besides the Western & Atlantic?

A. No, sir.

16. Q. Is there not a railroad running to Rome, Georgia?

158 A. If there is, it is a branch of the Western & Atlantic Road. The Rome Railroad operated by the Western & Atlantic Road runs between Kingston and Rome.

17. Q. Does not that road make connection at Rome with other roads?

A. Yes, sir; it connects with the roads leading from Rome.

18. Q. To what points—roads leading from Rome to what points?

A. Pretty near the whole of the United States. The initial lines at Rome are the Chattanooga, Rome and Columbus, the Southern Railway and the Western & Atlantic Railroad.

19. Q. Those roads connect, do they not, with lines in every direction almost?

A. Yes, sir.

20. Q. Is there not another road reaching Cartersville besides the Western & Atlantic?

A. The East & West road, 117 miles long, crosses the Western & Atlantic road at Cartersville.

21. Q. Goods from Cincinnati destined to Atlanta may be hauled as far as Chattanooga over the Cincinnati, New Orleans & Texas Pacific road, or over the Louisville & Nashville, may they not?

A. Yes, sir.

22. Q. The former is the short line, is it not—The Cincinnati, New Orleans & Texas Pacific?

A. Yes, sir.

23. Q. Is it not almost the invariable rule that the short lines make the rates?

A. It is, sir.

24. Q. You stated in your direct examination that the average receipts per ton per mile and the estimated cost of carrying per ton per mile of freight in general furnished no standard from which could be ascertained what is a reasonable rate in a given case?

A. No, sir; I stated that was not a standard in the making of rates.

25. Q. Are they standards in determining the reasonableness of a rate in a given case?

A. They may be a factor in some cases to judge it by, but they would not be a standard.

26. Q. How long have the roads been in the habit of making out these data—the average per ton per mile, the estimated cost of carrying one ton per mile?

A. For as long as I have been connected with the railroads.

159 27. Q. You have been connected with them since 1880?

A. Yes, sir.

28. Q. What use do the roads make of these data?

A. It gives them a chance to know what the average rate per ton per mile is that they realize on their entire traffic that may be used for other purposes.

29. Q. These data are the result of calculation, are they not?

A. Yes, sir.

30. Q. In your direct examination you were asked and gave the rates from the different classes from Cincinnati to Calhoun, Adairsville, Kings-

ton, Cartersville, Acworth, and Marietta. Are not the rates from Cincinnati through these intermediate points to Atlanta as follows:

(2)

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
107	92	81	68	56	46	28	35	28	24	48	53	48

A. Yes, sir.

31. Q. Is not the distance from Cincinnati to Atlanta by the line via the Cincinnati, New Orleans & Texas Pacific Railway and the Eastern & Atlantic through these intermediate points 474 miles?

A. I have got it 475.

32. Q. Do these rates from Cincinnati to Atlanta pay operating expenses?

A. They do, sir.

33. Q. Do they pay anything over and above operating expenses?

A. I think so.

34. Q. Are not the rates from Atlanta to Cincinnati fixed by agreement between the lines to that point?

A. I think they were originally so fixed.

35. Q. Atlanta is in the territory which was formerly subject to what is called the jurisdiction of the Southern Railway and Steamship Association, is it not?

A. Yes, sir.

36. Q. Did not that association determine the true rates to all competitive points in that Southern territory?

A. That the association was the means through which the rates were determined.

37. Q. By the carriers members of it?

A. Yes, sir.

38. Q. How do you determine whether a given rate is reasonable or unreasonable?

160 A. If a point under any prevailing adjustment of rates is able to hold and develop its trade, I regard such an adjustment of rates as reasonable.

39. Q. Is a rate reasonable which does not yield the carrier a proper remuneration over and above the cost of service?

A. I do not believe carriers make rates below the cost of transportation. I would consider such a rate as unreasonably low.

40. Q. It would not, then, be a reasonable rate unless it yielded a proper remuneration over and above the cost of service?

A. It would be an unreasonably low rate.

41. Q. Is not, therefore, the expense of cost of the service an element to be considered in determining the reasonableness in and of itself of a given rate?

A. I presume, when you get rates down to a certain point, that element would be considered a factor.

42. Q. Does not the cost of the expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. Distance is a factor, but not a controlling one.

43. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Not necessarily. Through traffic for the longer haul is handled in less time than local traffic for the shorter haul.

44. Q. I stated, other things being equal—that is, the same rate of speed for the long haul as for the short haul—is not the consumption of time greater the greater the distance?

A. The consumption of time is a factor in the expense, of course, like everything else is.

45. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is one of the items of expense.

46. Q. The answer to that is yes, I suppose?

A. Yes, sir.

47. Q. Is not the wear and tear on locomotives, cars, tracks, railroad, etc., greater the greater the length of the haul?

A. That is another item of expense.

48. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the road, other things being equal?

A. Yes, sir; the longer the road the larger the total expenses of maintaining the road.

49. Q. Does it not require more locomotives, cars, and more crews for the running of trains on a long road than on a short one, as a general rule?

161 A. That depends largely on the amount of the traffic you have got to handle.

50. Q. Other things being equal, does not distance add to the cost of building the road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater, the greater the length of the road?

A. It costs more to build a five-hundred-mile road than a fifty-mile road, and the fixed charges on a 500-mile road would be greater than on the 50-mile road, although the charges would not be greater per mile.

51. Q. Is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper markets for goods or produce which he will not have for fifty miles?

A. If you mean by that that a hundred-mile road to a shipper at Nashville for the distribution of his merchandise is of more value than a road 50 miles in length, for instance, that is true.

52. Q. Are not the through rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Merietta made up of the rate from Cincinnati to Chattanooga plus the local rate from Chattanooga to those points?

A. To Calhoun, Adairsville, and Cartersville the rates are made on the Chattanooga combination; likewise, to Kingston, except on class D, which is made on the Rome combination; likewise to Acworth, except as to classes C, D, & F, which are made on the Rome combination; likewise to Marietta, except class A, B, C, & D, which are made on the Atlanta combination.

53. Q. Is not traffic transported from Cincinnati to Chattanooga, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued at Cincinnati by the initial carrier?

A. Yes, sir.

54. Q. Is not such traffic carried through from Cincinnati to those points in cars in which they were originally shipped at Cincinnati?

A. Not necessarily, sir. It may involve transfers at one or more points.

55. Q. In case of car loads of traffic?

A. Car-load freight would be handled in a through car, I think.

56. Q. Is not the expense of the carrier for strictly local hauls in less than car loads greater per ton per mile than on long through hauls?

A. I consider the hauling of local traffic more expensive than the hauling of through traffic.

162 57. Q. Were not the through rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta established primarily to cover the expense of the local hauls originating at the former place and terminating at the latter points?

A. My understanding is that the rate from Chattanooga to Georgia points on the Western & Atlantic road are made according to the Georgia Railroad Commission.

58. Q. Does not the Georgia Railroad Commission establish local rates on traffic between points in that State?

A. It establishes maximum rates.

59. Q. They are local rates, are they not?

A. Yes, sir; not necessarily local.

60. Q. Why not local?

A. They fix the rate between Atlanta and Macon. That can hardly be construed a local rate. They tell you what the maximum shall be between those points.

61. Q. But they also fix the local rate?

A. They fix the maximum rate that can be charged by the carrier between any two points in the State of Georgia.

62. Q. Are not the rates from Chattanooga on the Western & Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

63. Q. And they are fixed by the Georgia Railroad Commission, I believe you said?

A. They are fixed according to the Georgia Railroad Commission tables.

64. Q. Does the Georgia Railro'd Commission establish proportions of through rates from Cincinnati or New York or other points outside of the State of Georgia to points within that State?

A. The Georgia commission do not undertake to fix any rate other than those they have fixed in their tables. As I understand it, they do not meddle with interstate traffic—do not establish proportional rates.

65. Q. They have not jurisdiction, have they, of rates on interstate traffic, or any proportion of those rates?

A. No, sir.

66. Q. You have stated that the competition which affects transporta-

tion to Atlanta has caused the carriers to charge lower rates to Atlanta than to the shorter-distance points, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, I believe.

A. Yes, sir.

163 67. Q. Would the carriers charge rates higher than the present rates to Atlanta if this competition to that point, affecting transportation to that point, did not exist?

A. If competition was eliminated, I think higher rates would be charged to Atlanta.

68. Q. The present rates to Atlanta, then, from Cincinnati are lower than would be charged if competition affecting transportation to that point did not exist?

A. Yes, sir; my view of the case is that they would be higher.

69. Q. Are not the present rates to Atlanta, then, viewed from the standpoint of the value of the service and excluding competition as an element unreasonably low?

A. No, sir; I think not.

70. Q. If, as you say, that viewed from the standpoint of the value of the service and excluding competition as an element to be considered, the rates to Atlanta are not unreasonably low, then if increased, would they not, considered from the same standpoint, be unreasonably high?

A. They may be considerably increased without being unreasonably high.

71. Q. Will not a material increase of rates already not unreasonably low make such rates unreasonably high?

A. It depends upon the increase.

72. Q. I said material increase.

A. A material increase—in some cases a five-cent advance may be material, considering the circumstances and conditions, while on the other hand a fifty-cent increase might not make a material increase.

73. Q. Well, if it were material, is the question?

A. I do not know that I can answer that any differently.

74. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. Since 1882.

75. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever to your personal knowledge been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer distance point?

A. So far as my knowledge goes, no exception has been made in making a greater charge for the shorter than for the longer distance under dissimilar circumstances and conditions.

164 76. Q. Is not competition in transportation the only ground or reason for making a higher rate for a shorter than for a longer haul over the same line in the same direction, the shorter being included in the longer?

A. Competition is a controlling factor.

77. Q. Is there any other factor? And if so, state it.

A. No, sir; it is the controlling factor. I do not mean by that simply the competition between carriers, but also competition between markets.

78. Q. State, if you know, whether or not through freight from Cincinnati to Atlanta is delivered free to consignees at Atlanta or by switching to the warehouse doors.

A. I think competition freight is delivered through switching. I do not understand that there is any free cartage in Atlanta.

79. Q. Is such free delivery made at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. So far as I know, there is no warehouse or store having direct connection with the Western & Atlantic road, and hence the delivery is performed at its depot.

80. Q. Do you know the local rates from Atlanta back to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun?

A. We have a record of them, but I have not them here.

Redirect examination by Mr. BAXTER:

1. Q. Please examine copy of the report made by the Louisville & Nashville Railroad Company to the Interstate Commerce Commission for the year ending June 30, 1893, here shown you [exhibiting report to witness] and from page 17 state the amount of dividends declared during that year.

A. $2,112,000.

2. Q. Refer to page 19 of the same report and state the amount of interest paid by the said company upon its funded debt during said year.

A. $4,233,978.38.

3. Q. Refer to page 45 of said report and state the amount paid by said company during that year for operating expenses.

A. $14,670,055.07.

4. Q. Taking the rates allowed by the Louisville & Nashville Railroad Company upon its entire line of traffic, passenger as well as freight, to and from all points, and upon all the classes, is it true that the revenue derived from that total line of rates would have to be sufficient to
165 pay the amounts shown by that report to have been paid out for dividends, interest on the funded debt, and operating expenses?

A. Yes, sir.

5. Q. Now, suppose a rate upon a particular class of traffic between any two specified points is sufficient to pay its due proportion of operating expenses and interest upon the funded debt, but is not sufficient to pay its proportion of those two items and also its proportion of the dividends, would you consider the company justified in working for that rate?

A. Yes, sir; if it paid something over and above the cost of handling.

6. Q. Now, suppose a rate upon a particular class of traffic between particular points is not sufficient to pay its proportion of dividends or its proportion of the funded debt, but will pay more than its proportion of the operating expenses, would you decline that traffic?

A. No, sir.

7. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your

examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Recross-examination by Mr. SHAVER:

1. Q. If a given rate to a given point is not high enough to pay operating expenses on the traffic to that point, does not a part of those operating expenses have to be borne by the traffic to other points?

A. We do not mean to take business that will not pay operating expenses.

2. Q. If a given rate to a given point does not pay operating expenses and also something on the dividend and fixed charges, would not a part of the burden of paying those dividends and fixed charges which ought to be borne by the traffic to that point have to be borne by the traffic to other points?

A. I think not. Where freight pays the additional expense in handling it, it is no burden upon any other traffic.

3. Q. I asked if the payment of dividends and of interest on investment, etc., which are known, I believe, as fixed charges—if a part of that burden which ought to be borne by the traffic to a given point, the
166 rate on which does not pay any part of that burden—would it not have to be borne by the traffic to other points?

A. I can not answer differently from what I have done; that is, that traffic that pays the additional expense of handling is not a burden upon those items.

4. Q. As a general rule, ought traffic to all points bear a certain proportion of the burden of the fixed charges?

A. I fancy that is the way everybody would like to have it.

5. Q. I asked if that ought not to be the case as a general rule?

A. Well, there are exceptions to all rules, and as I said, it would be a very desirable rule.

6. Q. That would be equitable and just, would it not?

A. Yes, sir; it would be equitable and just; but the conditions under my previous answer are not inequitable.

Mr. SHAVER. That is all.

FORT MONROE, VA., *June 24, 1897.*

J. M. CULP, a witness on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. J. M. Culp; 48 years; Washington, D. C.; traffic manager Southern Railway.

2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Upwards of 26 years.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati or other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Alabama. The enforcement of this order would compel the following

reductions in cents per one hundred pounds in the rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun.....cts..	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville.....	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville.....	10	11	9	8	6	1 9	....	8	6	5	8	9	11½
Acworth.....	17	15	13	10	8	311	....	10	7	6	10	11	13
Marietta.....	20	17	15	11	9	410	....	10	7	6	8	12	14

167 State what in your opinion would be the effect of such reductions in said rates, as to increasing the traffic to those stations, so as to make up any losses of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The effect of such reductions in said rates would not increase the value of traffic carried by the road. It might distribute the traffic differently as between these stations themselves and as between these stations and Atlanta as distributed under the present adjustment. But no more grain or flour, meat, liquors, manufactured articles, merchandise would be shipped or consumed than is at present shipped or consumed with the same population.

4. Q. The rates and distances from Cincinnati to the following stations on the W. & A. Railroad in December, 1892, were as follows:

From Cincinnati, O., to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga.....	396	109	96	84	71	59	44	34	40	32	27	53	57	56
Adairsville.....	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston.....	415	115	101	88	75	61	46	35	42	33½	27	55	61	55
Cartersville.....	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth.....	439	124	107	94	78	64	49	37	45	35	30	58	64	61
Marietta.....	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion such rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. They are just and reasonable in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freights. Traffic has been shipped with profit under these rates. They are just relatively to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition and added to the rates from Chattanooga to the several stations which are the same for the same distance as the rates fixed by the railroad
168 commission of Georgia and pronounced by that body just and reasonable.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati and New Orleans Texas Pacific Railroad Company competed in 1892 and now competes for traffic from Cincinnati to Chattanooga.

The Louisville and Nashville, in connection with the Nashville, Chattanooga & St. Louis Railway, also competes for traffic from Cincinnati.

The Baltimore & Ohio Southwestern also competes via Louisville in connection with the Louisville & Nashville.

The Nashville, Chattanooga & St. Louis Railway Co., and in connection with the Illinois Central Railroad (Louisville division).

The Memphis & Charleston Railroad for traffic from Cincinnati to Chattanooga.

6. Q. The rates from Cincinnati to Chattanooga are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

The distance from Cincinnati to Chattanooga is 336 miles. State whether in your opinion said rates are just and reasonable or unjust or unreasonable, and give your opinion for any opinion you may express.

A. These rates pay more than the cost of transportation; in other words, give a profit over the cost of moving them. They are as high as competition will permit them to be made. Therefore, measured by these standards, they are not unjust and unreasonable.

7. Q. Name the various transportation lines that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F classes.

A. I will endeavor to enumerate the principal ones. From the Western section of the country, lines operating from the several Ohio and Mississippi crossings are:

The Cincinnati, New Orleans and Texas Pacific Railway.
The Baltimore and Ohio Southwestern.
The Louisville & Nashville.
The Southern Railway in Kentucky.
The Illinois Central Railroad (Louisville division).
169 The Ohio Valley Railroad.
The Nashville, Chattanooga, St. Louis Railway.
The Illinois Central Railroad (main line.)
The Mobile & Ohio Railroad.
The Memphis & Charleston Railroad.
Kansas City, Memphis & Birmingham Railroad.
The Alabama & Vicksburg Railroad.
The New Orleans & Northeastern Railroad.

Of these, the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, the Illinois Central Railroads have routes from two or more of the river crossings referred to.

These lines named connect at crossings with lines operating beyond the Ohio River and the Mississippi River, reaching the entire Northern, Northwestern, and Western sections of the United States.

Second, from the Northeastern section of the country, including Eastern seaboard cities, there are, in addition to some other lines previously enumerated in the first paragraph—

The Pennsylvania Railroad, the Baltimore & Ohio Railroad, the Philadelphia & Reading Railroad and other lines operating via all rail

routes through Hagerstown, Roanoke Junction, Strasburg Junction, Alexandria, Richmond and Portsmouth, Virginia, in connection with lines operating south of those junctions, such as

The Southern Railway.

The Norfolk & Western Railway.

The Seaboard Air Line.

The Atlantic Coast Line.

The Cape Fear and Yadkin Valley Railroad.

Besides these, there is competition of thoroughly equipped and well-managed steamship routes operating through South Atlantic ports, such as

Merchants & Miners' Transportation Company, operating from Boston via the Chesapeake ports, and from Baltimore via Savannah, Georgia.

The Ocean Steamship Company, from Boston, New York, and Philadelphia via Savannah, Georgia.

The New York & Texas Steamship Company (Mallory line), operating from New York via Brunswick, Georgia.

The Clyde Steamship Line, operating from New York and Boston via Charleston, South Carolina, and from Philadelphia via Chesapeake ports.

The Old Dominion Steamship Company, operating from New York via the Chesapeake port.

The Baltimore Steam Packet Company (Bay line) and the Balti-
170 more, Chesapeake & Richmond Steamboat Company (York River line), operating from Baltimore, Md., via the Chesapeake ports. These various steamship lines have rail connections at said Chesapeake ports or South Atlantic ports, and for years competed and still actively compete for traffic from the entire Eastern seaboard to Atlanta.

8. Q. State whether or not the Southern Railway Company and its connections actually and actively compete for the carriage of freight of the various classes above mentioned to Atlanta; and if so, from what cities?

A. They do actually and actively compete from all the principal Eastern, Western, and Virginia cities, as well as from cities in the Southern States.

9. Q. Does your road or its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. They do. The Southern Railway at many of the prominent cities; its connections at others; in some cases there are both agents of the Southern Railway and its connections.

10. Q. Does your railroad and its connections advertise at said cities for the transportation of said to Atlanta?

A. They do by having offices established there; by means of tariffs; by active solicitation of business daily.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commission from the Georgia seacoast taken into consideration.

A. What are approximately the rates of the steamship companies from Eastern cities to South Atlantic ports are used and to these rates are added the rates from Savannah and Brunswick to Atlanta approved by the railroad commission of Georgia. These rates may not in every instance be exactly the sum of these rates; but that is the general basis, and the rates are approximately on that basis.

12. Q. Can the number of tons carried one mile or the number of tons carried of freight earning revenue or the average receipts per ton per mile or the average cost of carrying one ton one mile either jointly or separately be used as the standard for railroad rate making?

A. It can not and is not.

13. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted?

A. It does. Not only does it affect the rate itself, but it likewise affects the circumstances and conditions under which the property may be carried. Competition will require a road to run trains at a higher rate of speed; it will require it frequently to carry cars loaded to a
171 less weight per car; it will require it to take sometimes a part of a carload without waiting to fill up the car; it will require frequently the road to pay a claim, the payment of which the railroad company might successfully resist, in order to get business; and therefore it does very materially affect the circumstances and conditions under which the property is transported, in add'tional to the rate of freight which it affects.

14. Q. State whether the rates of freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. They are entirely controlled by competition. They are controlled by competition between the railroads themselves, the railroads leaving from the Ohio River themselves and controlled by competition from the Eastern seaboard. The adjustment of rates on certain classes is based upon the same rates from Cincinnati to Atlanta as from Baltimore to Atlanta. This is not true of all classes, but it is true of a number of classes.

15. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as exists at Atlanta, Georgia.

A. There is not the same competition. There is competition existing up to Chattanooga, strong competition, and the rates fixed by that competition are used in making the rates to these local stations; as I have before testified, to these competitive rates up to Chattanooga are added the rates which are the same for the same distances as the rates of the Georgia commission.

Cross-examination by Mr. SHAVER:

1. Q. You stated in your direct examination that certain named reductions in rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta would not increase the tonnage hauled by the road. Would it not increase tonnage to these intermediate points?

A. It might increase it slightly but not materially.

2. Q. Those reductions would make the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta not higher than the Atlanta rates, would they not?

A. Yes, sir.

3. Q. Do not Atlanta merchants under the existing system of rates sell goods at Marietta, Acworth, &c., and in adjacent territory in competition with the local merchants at those points?

A. Yes, sir; and to the merchants likewise, I understand.

4. Q. Are not transportation rates an element that go into the price of goods sold?

172 A. Yes, sir; some articles to a greater extent than others. Into the price of some articles transportation charges enter only to a small extent.

5. Q. Is not the tendency of the reduction in rates to reduce the price of goods and merchandise?

A. Where the transportation charge forms an important part of the price of the goods, a reduction in the freight rate does tend to reduce the price.

6. Q. Does not the reduction in the price of goods tend to increase the consumption of those goods? In other words, are not the people enabled to buy more goods where the prices are low than where they are high?

A. I do not think it increases the consumption materially, provided that the higher rates are not so high as to prevent or materially restrict shipments. Ordinarily a man will wear no more clothes, eat no more, at one rate of freight than another, provided the higher rate of freight is not prohibitory to the traffic.

7. Q. Do not low prices enable more people to buy certain articles of merchandise than would otherwise buy them; or, in other words, put those articles in the reach of more people?

A. Well, if the reduction in the rate is material so as to make a material reduction in the price of the article sold, more goods can be bought for the same amount of money. That goes without saying. But a man does not take a certain amount of money when he goes to buy goods or provisions, or farm implements, or live stock, and buy all that he can with that money. He buys what he needs and as a rule he does not buy any more than that, and a reduction in the rates of freight from Cincinnati to these particular stations between Atlanta and Chattanooga would not, in my opinion, induce a buyer to buy any appreciable amount of merchandise more than he buys upon the present rates.

8. Q. You have just stated that under the existing system of rates Atlanta merchants sell goods at Marietta, Acworth, and these other stations between Chattanooga and Atlanta, and in the territory adjacent to these stations in competition with local merchants at those points. Would not those local merchants be enabled to compete more successfully with the Atlanta merchants if their rates were not higher than the Atlanta rates?

A. They might sell a few more goods. As a matter of fact, Atlanta sells to these merchants to a certain extent.

9. Q. If these merchants had the same rates from Cincinnati as Atlanta, could they not procure their goods from Cincinnati which they now, as you said, buy from Atlanta?

A. As I said, they might buy a certain amount more—yes, sir—direct from Cincinnati. I can not say to what extent, but not to a great extent.

173 10. Q. Is not the tendency of low rates at a locality to induce investment of capital there and also to induce population to come there?

A. If a point were singled out, rates might be made at that point

which would draw population and commerce and industry to that point as against other points where materially higher rates were charged, but I am quite sure that a reduction of the rates from Cincinnati to these points named to the same as the Atlanta rates would not materially increase commerce or the manufacturers of the population of these towns. On manufactured articles, manufactured at local stations, the practice is to make the rate to points of consumption or distribution not higher than the rates from the competitive point beyond manufacturing, and shipping the same kind of manufactured articles to the same point of destination. So that a reduction in the rate from Cincinnati to these points to the same as Atlanta would not likely have any effect upon the manufacture of articles and merchandise at these points.

11. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory are not the rates which are preferential to one of those localities as against the other prejudicial to the business of the locality discriminated against?

A. If there is a material difference in the rates, the locality which has the lower rate has some advantage, but one locality will always have some advantage over another locality. The rates to Atlanta were made by competition which so far has been uncontrollable. The rate exist as a result of that competition. Competition to the same extent does not exist at the local points named. A reduction of the rates from Cincinnati to these local stations to the same as the rates to Atlanta would be to place at these local stations artificially and arbitrarily a compe'tion which does not exist there, and which does exist at Atlanta.

12. Q. The rates on first-class goods, as you have stated, from Cincinnati to Marietta is $1.27, while the rate for the haul to Marietta, 21 miles, on to Atlanta is $1.07, making a difference of 20 cents in favor of Atlanta. Is that a material difference in rates, in your opinion?

A. On first-class goods, if Marietta had the Atlanta rate, in my opinion, it would not receive one pound more of dry goods or of merchandise or articles in first class. It would not sell to the consumer articles at any less price in all probability than it now sells—articles in the first class.

13. Q. Does not Atlanta enjoy advantages in rates over localities in the territory immediately surrounding Atlanta from all directions?

A. Atlanta has lower rates from the West than the localities
174 immediately surrounding her. She has lower rates from the East to some of the localities surrounding her, but not to all localities.

14. Q. Has not Atlanta not only lower rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, but also lower rates from New York and Stone Mountain, Convers, Covington, Social Circles, Madison, and Greensboro on the Georgia Railroad, and relatively as well as absolutely lower rates from Cincinnati, Jonesboro, Hampton, Griffin, Barnesville, and Forsyth on the Central Railroad of Georgia, and lower rates both absolutely and relatively from New York than Newman, Cartersville, Hawkinsville, Lagrange, and West Point on the West Point railroad?

A. The rates from Cincinnati to Atlanta are actually lower than to Calhoun, &c. Rates from New York to Atlanta are actually less than

from New York to Stone Mountain, &c. The rates from Cincinnati to Atlanta are absolutely less than the rates from Cincinnati to Jonesboro, &c., but not relatively less. The rates from New York to Atlanta are actually less than from New York to Newman, &c., but not relatively less.

15. Q. In your direct examination you named certain lines which compete for business from Cincinnati to Chattanooga. May not all these lines be formed to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta by combinations with the Western & Atlantic Railroad upon which those points are located?

A. All are used in forming combinations with the Western & Atlantic for business at these points, and all do compete up to Chattanooga for this business, and the rates are fixed by that competition up to Chattanooga. They are not used in the construction of the rates to these local points.

16. Do not all these lines compete for traffic to Calhoun, Adairsville, Kingston, Acworth, and Marietta?

A. They do all compete up to Chattanooga for business for these stations, naming them.

17. Q. May not all the lines which you named as leading to Atlanta also be formed to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun by combinations with the Western & Atlantic Railroad upon which those points are located?

A. Leading up to Chattanooga, all these lines may compete for business to these local stations as well as to Atlanta, but the competition at Atlanta is stronger. There are lines competing for business from Cincinnati to Atlanta in addition to the lines up to Chattanooga. Between Chattanooga and Atlanta there are the Western & Atlantic Railway, the Southern Railway, the Chattanooga, Rome and Columbus Railway, in connection with the Southern Railway. There are likewise lines
175 leading from Cincinnati to Atlanta which have in the past taken business, namely, by river to Memphis, and then across from Birmingham to Atlanta.

18. Q. Is there not another line of railroad to Cartersville besides the Western & Atlantic?

A. There is the East and West Alabama.

19. Q. Is there not another line of railroad to Kingston besides the Western & Atlantic?

A. Not at present. The line leading between Rome and Kingston is a part of the Nashville, Chattanooga & St. Louis system, of which the Western & Atlantic Railroad is a part.

20. Q. But it is a distinct line of railway?

A. It is, through a lease, a branch line, part of the Nashville, Chattanooga & St. Louis Railway.

21. Q. It is, however, physically, a road running to Kingston from Rome, is it not?

A. It can not be called at present a separate road from the Western & Atlantic Road.

22. Q. It is not on the same road bed. . . . it is a road in a physical sense?

A. It may be called a branch of the Western & Atlantic Railroad from Kingston to Rome.

23. Q. Does it not connect at Rome with other roads leading in various directions?

A. I do not know whether there is a physical connection or not. If there is not a physical connection, business might be transferred anyway.

24. Q. I do not refer to a physical connection. I mean are there not other roads leading to Rome?

A. There are other roads leading to Rome.

24½. Q. Will you name those roads?

A. The Southern Railway and the Chattanooga, Rome and Columbus.

25. Q. Might not a number of lines be formed between Chattanooga and Kingston over those roads and their connections with the branch road from Kingston to Rome as a terminal carrier?

A. The competition at Kingston would not be increased by that. The lines which bring the business to the Western & Atlantic Railroad at Chattanooga would not increase competition at Kingston by sending the business via Rome. Indeed, I do not think that business from Cincinnati is sent to Kingston via Rome. It might if the Western & Atlantic Road would consent to the working of the business to Kingston via that route.

26. Q. You stated in your direct examination that the rates in question in this case from Cincinnati to Calhoun, Adairsville,
176 Kingston, Cartersville, Acworth, and Marietta were just and reasonable. Are you also of the opinion that the lower rates for the longer haul from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta to Atlanta are just and reasonable in and of themselves?

A. They are profitable in that they pay more than the cost of transportation. They are as high as competition will permit the rates to be made and, therefore, by those tests, they are just and reasonable.

27. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration in excess of the cost of transportation?

A. In my opinion a road is always justified in taking the additional traffic or traffic which it otherwise could not get, to the extent of making a rate as low as the actual movement expense incurred in the movement of that traffic.

28. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost and the expense of the service of carriage?

A. It is very difficult to obtain the actual cost of carriage. Railroads arrive at that result just as nearly as they can, and then they endeavor in making rates to fix that average cost or that estimated cost of carriage as a minimum below which they will not go. Now there may be average cost or estimated cost, including fixed charges. There is the cost which leaves out the fixed charges and take all other kinds of expense; then there is a cost which pertains simply to the movement of a particular business, a cost which is incurred only because that particular business is moved.

29. Q. Is not the expense or the cost of the service of carriage an element to be considered in determining the reasonableness or the unreasonableness of a given rate or set of rates?

A. My experience is that the estimated cost is only used as a minimum below which the carriers will not go.

30. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Other things being equal, the longer the haul, the greater the cost.

31. Q. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Other things being equal, yes. A great deal, however, is covered by that term "other things being equal."

32. Q. Is not the consumption of fuel greater, the greater the length of the haul, other things being equal?

A. Other things being equal, yes.

177 33. Q. Is not the wear and tear on locomotives, cars, tracks, road, etc., greater the greater the length of the haul, other things being equal?

A. Yes, sir.

34. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the haul, other things being equal?

A. Yes, sir.

35. Q. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short road?

A. Other things being equal, yes, sir.

36. Q. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Other things being equal, yes, sir.

37. Q. Other things being equal, is not the service more valuable to the shipper the greater the length of the haul; in other words, will not a haul of 100 miles give a shipper more extended markets for his goods or produce than a haul of 50 miles?

A. Not necessarily. The haul to the shipper or consignee where he is at a point 100 miles distant from the point of shipment may not be worth as much as the haul to the consignees *a* remote only 50 miles from the same point of shipment.

38. Q. Are not the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made up of the through rate to Chattanooga plus the local rate from Chattanooga on to those points?

A. Yes, sir.

39. Q. Is not the traffic from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta transported under through bills of lading naming the aggregate through rate and issued by the initial carrier at Cincinnati?

A. Shipments are consigned to and through rates are guaranteed by the initial carrier.

40. Q. Is not the expense to the carrier on local hauls in less than carloads greater per ton per mile than on long through hauls?

A. Other conditions being equal, yes, sir.

41. Q. Are not local rates generally made higher per mile than the proportions of through rates for the same distance?

A. Yes, sir; generally; not always.

42. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

178 A. More than 26 years.

43. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce, in 1887, except in cases of competition in transportation to the longer distance point?

A. Not that I recall. No line willingly and of its own volition arbitrarily reduces the rates to a further point to a less figure than an intermediate point. It is the result of competition where it does make the rate less for the longer then for the shorter distance in the same direction over the same line.

44. Q. You stated in substance, in your direct examination, that the average receipts per ton per mile and estimated cost of carrying one ton one mile on traffic in general did not furnish a standard by which you could determine what was a reasonable rate in a given case, I believe?

A. Yes, sir.

45. Q. Is not such data useful to some extent in determining whether an existing rate is or is not excessive?

A. It is useful in determining whether all the rates are excessive. In other words, the average receipts of a road per ton mile might be so much that, taken in connection with other things, it might be held that the rates were excessive. But much the largest proportion of the tonnage of all roads is carried at rates which are fixed by competition in some form or other, either of carriers or of markets or of one product with another product, which will serve the same purpose.

46. Q. How long have carriers been making out this data as to average receipts per ton per mile and estimated cost of carrying one ton a mile?

A. A great many of them do not do it at all. The Southern Railway to-day does not attempt to figure the cost per ton per mile of carrying freight. The records of the East Tennessee, Virginia & Georgia Railroad show that the estimated average cost for transporting all kinds of freight on all portions of the East Tennessee, Virginia & Georgia Railroad from April 1st, 1891, to June 24, 1892, inclusive, was seventy-one one-hundredths (.71) of a cent per ton per mile.

47. Q. Has not this data been kept by other roads for a great many years?

A. I have no information that any road has invariably kept the cost per ton per mile for a great many years. Some roads have done it for some years, I know.

48. Q. They have done it for their own use, have they not?

179 A. I presume so. It is published in their annual reports. I will say that my opinion is that it is very difficult if not impracticable to arrive at the actual cost per ton per mile of moving freight traffic over my road.

49. Q. This data is based upon actual calculation, is it not?

A. The average receipts per ton per mile are very easily arrived at. The average cost per ton per mile, as I have testified, is estimated as to the East Tennessee, Virginia & Georgia Railroad.

50. Q. The average receipts per ton per mile are the result of accurate calculation, is it not?

A. Yes, sir.

51. Q. Was not Atlanta recognized as a competitive point by the Southern Railway and Steamship Association?

A. Yes, sir.

52. Q. Are not the rates now in force from Atlanta to Cincinnati the same as they were during the existence of the Southern Railway & Steamship Association?

A. Yes, sir; on these classes referred to.

53. Q. Were not the rates which were maintained while the Southern Railway & Steamship Association was in existence promulgated by that association with the consent of the carriers, members of that association?

A. Published by their consent and direction.

54. Q. Is not the Southeastern Freight Association the successor to the Southern Freight Association, which, in 1895, succeeded the Southern Railway & Steamship Association?

A. Yes, sir; but under a different agreement.

Redirect examination by Mr. BAXTER:

1. Q. Something has been said in the cross-examination in regard to the value of the service. May there not be a difference between the value of the service to the shipper and the value of the service to the carrier?

A. Precisely. The value of the service to the shipper or consignee for the transportation of 100 lbs. of stuff may be only 25 cents per hundred pounds. The value of that service may be to the carrier greater from at least two reasons: One, that it will cost it more to perform the service than the 25 cents; another reason that it may be employing all of its motive power and rolling stock in the transportation of property which yields it for an equivalent service much more net money than 25 cents would for the service referred to.

180 2. Q. If the shipper living at Memphis, where cotton is worth in the market, say, 10 cents, ships that cotton to Holly Springs, where it is worth in the market only 9 cents a pound, would not the value of the service to him be less than nothing?

A. It would; one cent per pound less than nothing.

3. Q. If, on the other hand, he shipped it from Holly Springs, where it was worth 9 cents per pound, to Memphis, where it is worth 10 cents per pound, the value of the service to him would be one cent, would it?

A. Yes, sir; one cent per pound; and in either case the value of the service to the railroad company might be the same.

4. Q. Please file as Exhibit No. 1 to your deposition a copy of the articles of agreement of the Southeastern Freight Association.

A. I will do so.

(The same is hereto attached marked "Culp Exhibit No. 1.")

5. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

NASHVILLE, TENN., *July 14, 1897.*

JAMES R. THOMPSON, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. James R. Thompson; 43 years old; Atlanta; with the Southeastern Freight Association.

2. Q. State whether you were connected with the Southern Railway and Steamship Association and afterwards with its successor, the Southern State Freight Association; and, if so, in what capacity?

A. Yes, sir; I was a clerk in the statistical department.

3. Q. In both associations?

A. Yes, sir.

4. Q. Please examine the statement here handed you, headed—

"Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893."

State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

181 A. Yes, sir; I compiled it from the records of the Southern Railway and Steamship Association.

5. Q. If you say you compiled said statement as aforesaid, state whether you compiled it correctly and filed it as Exhibit number 2 in this case.

A. Yes, sir; I compiled it correctly from the records and I file it herewith as Exhibit number 2.

(The statement referred to is hereto attached, marked Exhibit No. 2.)

6. Q. State whether the figures under the heading "Weight" refers to pounds or tons.

A. Pounds.

7. Q. Please examine the statement headed

"Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Kentucky; and from Nashville, Tennessee; Johnsonville, Tennessee; and Florence, Sheffield, and Riverton, Alabama, to Atlanta, Georgia, during the year ended March 31st, 1893."

State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

A. I did, and it is correctly compiled from the records.

8. Q. File said statement as Exhibit No. 3 in this case.

A. I file the same herewith.

(The statement referred to is hereto attached, marked Exhibit No. 3.)

9. Q. State whether the figures in the body of said statement refer to pounds or tons.

A. Pounds.

10. Q. Under the heading "Lines" there appear certain initials. Give the names in full of the railroads referred to by said initials.

A. The Louisville and Nashville Railroad, the Cincinnati Southern Railway, the Louisville Southern Railroad, the Newport News and Mississippi Company, the Ohio Valley Railway, the Paducah, Tennessee,

and Alabama Railroad, the Illinois Central Railroad, the Mobile and Ohio Railroad, the Nashville, Chattanooga and St. Louis Railway, the Memphis and Charleston Railroad, the Kansas City, Memphis and Birmingham Railroad, the Yazoo and Mississippi Valley Railroad, the Georgia Pacific Railway, the Alabama and Vicksburg Railway, the New Orleans and Northeastern Railroad, the Birmingham, Sheffield and Tennessee River Railway, the Richmond and Danville Railroad.

11. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this
182 your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not know that I can.

Cross-examination by Mr. SHAVER:

12. Q. What relation did you say you sustained to the Southern Railway and Steamship Association?

A. I was clerk in the statistical department.

2. Q. For how long and during what period?

A. I have been with them for nearly ten years. The Southern Railway and Steamship Association, the Southern States Freight Association, and the Southeastern Freight Association.

3. Q. Was the Southern Railway and Steamship Association in existence during 1892?

A. Yes, sir.

4. Q. Did you compile the data that is in the two exhibits, numbered two and three, presented by you in your direct examination?

A. Yes, sir; I took them from the association's records. Of course I did not get up all those statements, but I did that from the printed records.

5. Q. From the records of the Southern States Freight Association?

A. Yes, sir.

6. Q. When did that association come into existence?

A. I could not tell you the exact year. I could get it for you at the office.

7. Q. Did not the Southern Railway and Steamship Association cease to exist in 1895?

A. Two years ago that would be. That is just about the time.

8. Q. These statements, Exhibits Nos. 2 and 3, to your answer purport to contain data for the year which ended March 31, 1893?

A. Yes, sir; that was taken from the Southern Railway and Steamship Association's records.

9. Q. And not from the records of the Southern States Freight Association?

A. They are just one. One went into the other. In 1893 it was the Southern Railway and Steamship Association and we were working under the Southern States Freight Association when they were made, but afterwards they were taken from the records of the Southern Railway and Steamship Association.

10. Q. You have no personal knowledge of the accuracy of the data contained in either of these exhibits, have you?

183 A. Yes, sir; I helped get it up from the billing—taken from the billing of the railroads sent to us every day. Now, that

western statement I helped get up from the billing. The eastern statement I took from the records after it was gotten up.

Counsel for the Commission moved to exclude Exhibits 2 and 3 on the ground that they are irrelevant, based on hearsay, and otherwise incompetent and illegal.

11. Q. Will you please examine this document and state whether it is the agreement of the Southern States Freight Association made on the 8th day of October, 1895?

A. I could not tell you. It just reads that, but I could not swear to it. I do not know anything about that.

12. Q. What is your relation to that association?

A. I am just a clerk.

13. Q. And you cannot identify that as an agreement of that association of that date?

A. No, sir; I could not say that was it. I can only say what is before me there—I could not prove it.

Mr. BAXTER. Exhibits Nos. 4 and 5 presented to the witness by counsel for the Commission are agreed to by counsel for the defendant to be correct copies of the agreements, which they purport to be.

(The agreements above referred to are hereto attached, marked Exhibits Nos. 4 and 5.)

Redirect examination by Mr. BAXTER:

1. Q. How were the statistics contained in Exhibits Nos. 3 and 4 to your deposition obtained by the Southern Railway and Steamship Association; from whose records were they compiled?

A. It was taken from the billings that was sent in by all the railroads to our office on all competitive business.

2. Q. Did each of the railroad companies that was a member of the Southern Railway and Steamship Association send into that association copies of its billing for transportation of competitive freight?

A. Yes, sir.

3. Q. And it was from those billings that those statistics were originally compiled by the association?

A. Yes, sir.

4. Q. How many of those billings on an average do you suppose were received by the association daily—rough estimate?

A. I expect we get about two or three thousand bills a day.

184 5. Q. How many clerks were required to compile the statistics for those billings?

A. Fourteen, I think, in our department.

6. Q. Did you get billings from any railroad companies that were not members of the association?

A. I do not think we did.

Recross-examination by Mr. SHAVER:

1. Q. All those companies named on Exhibits 2 and 3 were members of the Southern States Freight Association?

A. Yes, sir.

2. Q. And you said that that data was taken from the record of the Southern Railway and Steamship Association?

A. Yes, sir.

3. Q. Those roads were also members of the Southern Railway and Steamship Association, were they not?

A. Yes, sir; I think they were.

Redirect examination by Mr. BAXTER:

1. Q. The Southern States Freight Association succeeded the Southern Railway and Steamship Association, did it not?

A. Yes, sir.

2. Q. And all the records of the latter were turned over to the former?

A. Yes, sir.

3. Q. What association succeeded the Southern States Freight Association?

A. The Southeastern Freight Association.

4. Q. Were all the records of the Southern States Freight Association turned over to the Southeastern Freight Association?

A. Yes, sir; at least, I suppose they were. We have all of them. We kept them. It is exactly the same thing and has another name. It is not the same altogether.

5. Q. Are all the roads which are named in Exhibits Nos. 2 and 3 members of the Southeastern Freight Association?

A. No, sir.

NASHVILLE, TENN., *July 15, 1897.*

JOSEPH M. BROWN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

185 A. Joseph M. Brown; 42nd birthday; my personal residence is Marietta, Georgia; my official residence, Atlanta, Georgia; occupation, traffic manager of the Western & Atlantic Railroad Company.

2. Q. How long have you been connected with the railroad transportation business in the United States, and in what capacities?

A. Since the 1st day of January, 1877. I went into the service as freight clerk, and filled a number of subordinate positions, as freight conductor, car agent and inspection agent here at Nashville, claim agent, accountant, freight agent, general freight agent, and passenger agent and traffic manager.

3. Q. State how the rates charged by the Western & Atlantic Railroad from Chattanooga to stations on the Western & Atlantic Railroad compare with the rates authorized and approved by the Georgia Railroad Commission as reasonable and just for similar distances in the State of Georgia.

A. The rates charged by the Western & Atlantic Railroad from Chattanooga to Western and Atlantic local stations are in accordance with the standard tariff rates of the Railroad Commission of Georgia. The standard tariff of the Georgia commission is, in a number of cases, reasonable and just; in quite a few cases the standard rates of the aforesaid commission are lower than the conditions would seem to warrant. This is specially apparent when comparison is made with rates in force in other Southern States. Upon only three roads in the State of Georgia is the

standard tariff operated, namely, the Western and Atlantic Railroad, the Rome Railroad, operated by the Western and Atlantic, and the Georgia Railroad. All other roads are allowed certain percentages of increase, except on classes C, D, F, J, and P of the standard tariff. These increases range from 10 to 50 per cent.

4. Q. Do you mean that the other railroads in Georgia are allowed by the commission of that State to charge from 10 to 50 per cent more than the Western Atlantic Railroad, except upon the classes mentioned?

A. Yes, sir; the railroad commission have established what they call a standard tariff, and that standard tariff is only made obligatory upon the Western and Atlantic and the Georgia Railroad and this little Rome Road that we operate. Every other road in the State, including the Central, the Southern, the Atlanta and West Point, the Plant System, are all allowed to charge from 10 to 50 per cent higher than the standard tariff.

5. Q. File as Exhibit No. 6 in this case the following pages
186 from the 23rd Annual Report of the Railroad Commission of Georgia, from October 15, 1894, to October 15, 1895, viz: pages 64, 65, 66, 67, 123, 124, 126, 127, 128, *128*, 129, and 130.

A. Yes, sir; I file the same herewith.

(The pages of the report referred to are hereto attached, marked "Exhibit No. 6.")

6. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	5	7	8	7
Cartersville	11	11	9	8	6	1	9	5	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what, in your opinion, would be the effect of such reductions in said rates, as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The reductions in the rate from Ohio River points to Western and Atlantic stations would not have the effect of increasing the movement of traffic to any appreciable extent. Certainly the reduction in the matter of dollars and cents to the Western and Atlantic Railroad would greatly exceed the revenue which the road would earn on whatever increase the reduction brought. I reach this conclusion from the fact that the movement of traffic from the Ohio River crossings and points basing thereon now consist largely of groceries, clothing, boots, and shoes. The reduction of these rates would not have an appreciable effect upon the price to

the consumer. From my observation the customer would not enter into large transactions with the merchants in his town and burden himself with an undue amount of goods simply because the town in which he was located had been given somewhat lower rates than had hitherto been in use.

I offer three homely and practical illustrations which go to show that the reductions, however material they may be in their effect on the revenue on the roads, carry no benefit to the consumer.

187 An ordinary suit of clothes ready made retails at Acworth, Georgia, for about $12.50. The weight of a suit will average five pounds. The Interstate Commerce Commission in its decision of 1892 ordered a change from one dollar and thirty-four cents to one dollar and seven cents for a hundred pounds of clothing, or a reduction of 17 cents a hundred pounds, quite an item to the railroads. If the purchaser should receive the full benefit of the reduction he would get his suit for 85-100 of one cent less than he formerly gave.

A pair of shoes average in weight three pounds. A change from $1.24 to $1.07 per hundred pounds in the freight rate changes the price to the consumer, if he received the benefit of it, one-half of one cent. This would hardly appeal to him to increase his purchases.

The rate on class B, packing-house products, is 45 cents per hundred pounds to Acworth. If a change should be made to the Atlanta rate of 35 cents per hundredweight, the benefit to be derived by the consumer on a ham weighing fourteen pounds would be one and one-half cents.

7. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	24	40	32	27½	53	57	3[illegible]
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	5[illegible]
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	5[illegible]
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	5[illegible]
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	6[illegible]
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	6[illegible]

State whether or not, in your opinion, said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. The rates operated in 1892 from Cincinnati to Western and Atlantic stations were based on the through rates from Cincinnati to Chattanooga plus the locals of the Western and Atlantic Railroad from Chat-

188 tanooga. I deemed the rates made on the aforesaid basis just and reasonable. This statement I made from the fact that the rates to Chattanooga from Cincinnati on traffic for Western and Atlantic stations are practically the same as the portions which accrued on traffic destined to Atlanta and points basing thereon. It should be also borne in mind that the cost to the railroad is very much greater to handle traffic destined to local points than it is on through traffic. For example, the time between Chattanooga and Atlanta for through schedules is about 7 to 8 hours, while the time consumed by the local trains, doing work at the way stations, is 12 to 14 hours. Also the necessary expense at the local stations is more in proportion than at the terminal points, for the reason

that there is not sufficient work to keep the agent and their assistants busy, while at the terminal points only sufficient force is kept to do the work.

The Western and Atlantic rates from Chattanooga to Western and Atlantic stations are the same as the standard rates of the Georgia railroad commission, and those rates are from 10 to 50 per cent lower than the rates in force on the majority of roads in this State. As an illustration of the reductions which have taken place in the Western and Atlantic locals, I submit a rate sheet issued in July, 1866, by Mr. J. B. Smith, master of transportation of the Western and Atlantic Railroad, and those now in effect from Chattanooga to Acworth, Georgia.

The rate per hundred pounds in force were as follows:

1st class.

July, 1866	$2.00
June, 1897	$ .48

2nd class.

July, 1866	$1.25
June, 1897	$ .42

3rd class.

July, 1866	$ .78
June, 1897	$ .37

4th class.

July, 1866	$ .59
June, 1897	$ .31

5th class.

July, 1866	$ .54
June, 1897	$ .24

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6th class.

July, 1866	$ .36
June, 1897	$ .19

8. Q. In 1887 the Western and Atlantic Railroad issued a circular, through its connections, stating, in effect, that it would not accept less than its regular local charges on through business to points on its lines where competition did not compel it to participate in and agree to lower through rates. State whether or not the Nashville, Chattanooga and St. Louis Railway, as lessee of the Western and Atlantic Railroad, has continued to operate the Western and Atlantic Railroad under the notice contained in said circular. If you have a copy of said circular file it as an exhibit in this case.

A. The Nashville, Chattanooga and St. Louis Railway, as lessee of the Western and Atlantic Railroad, has continued to operate the Western and Atlantic Railroad under that notice contained in the circular issued

by the Western and Atlantic Railroad in 1887, which set forth the basis of making and dividing rates to Western and Atlantic local stations.

I have not been able to procure a copy of the Western and Atlantic Railroad circular issued in 1887. Said circular was in the files of the old leased company, which has been removed from the present offices and can not be located. The circular in question was published in the Atlanta Evening Capital, a paper now out of print and its file unobtainable.

Permit me to make this further explanation about that. When the interstate-commerce law was passed the Georgia Railroad issued a notice to its connections of the same purport as the one we have referred to, and it struck me as being a very proper notice, and I had a similar circular issued and sent to our connections, and, in accordance with law, we printed it in one of the daily gazettes of Atlanta. There were at that time three newspapers published—the Constitution, the Evening Journal, and the Evening Capital. The editor of the Evening Capital was quite a strong personal friend of ours and we thought it would be thoroughly legal notice in any one of the papers and gave the preference to the editor of that paper. That paper afterwards suspended—it died—and I have not been able to find anybody who has the files of it; and the circular in question was among the archives of the former company which leased and operated the Western and Atlantic Railroad, and all of their old papers are now scattered everywhere. I do not know what has become of them and hence I have been unable to get that circular, although I remember I issued it myself and remember the
190 purport of it thoroughly and make this sworn statement as to the matter.

Q. (Mr. SHAVER.) Have you, yourself, made search for this circular?

A. Yes, sir.

Q. (Mr. SHAVER.) Where?

A. I had had a number of old papers, just my own, pertaining to the old lease while I was a traffic official of it, and then there was a lot of old papers that they had that were sold to the Marietta Paper Company, and with Mr. Dickey, our general freight agent, I endeavored to find that, but that proved to be mainly old books and copies of way bills and things of that kind and we did not find it among them.

Q. (Mr. SHAVER.) Where should this circular properly have been filed?

A. You mean legally? You mean with the old Western and Atlantic Railroad or with the Interstate Commerce Commission?

Q. (Mr. SHAVER.) I mean in what office of the railroad.

A. It should have been filed in the traffic manager's office.

Q. (Mr. SHAVER.) Did you make a search there for it?

A. Yes, sir.

Q. (Mr. SHAVER.) That circular was issued after the passage of the interstate-commerce law?

A. Yes, sir.

Q. (Mr. SHAVER.) Was a copy of it filed with the Commission?

A. It was mailed to them. I do not know whether it got there or not.

Q. (Mr. SHAVER.) What was the date of its issue?

A. I could not give you exactly the date. It was after the passage of

the law, when a similar circular came from the Georgia Railroad
191 and when I saw Colonel ..... circular, I thought it proper for the Western and Atlantic Railroad to issue a similar circular, and we did issue it.

Q. (Mr. SHAVER.) Have you made inquiry of the proper officer of the Commission to ascertain whether the circular was filed or not?

A. I requested Mr. Dickey, our general freight agent, to get it, if possible, and I could not tell you whether he has gotten it or not. I could not tell you whether he has made that request of the Commission.

(Counsel for the Commission objects to the testimony as to the contents of the circular named, on the ground that the circulars itself is the best evidence of its contents, and no predicate has been laid for the introduction of secondary testimony as to the contents of said circular.

Counsel for the defendants refers to and relies upon the following language contained in the report and opinion of the Commission in this case: "In 1887 the Western and Atlantic Railroads issued a circular to its connections stating in effect that it would not accept less than its regular local charges on through business to point' on its lines where competition did not compel it to participate in and agree to lower through rates. This circular does not appear to have been filed with the Commission, nor were the defendants able to produce it at the hearing, but there is no reason to doubt its having been issued.

"When the circular was issued this road was under management, but the lessee now operating the roads introduces evidence concerning the circular, and continues to charge according to its terms.")

9. Q. State what voice, if any, the Western and Atlantic Railroad has in the making of rates from Cincinnati to Chattanooga.

A. The Western and Atlantic Railroad has no voice in making the rates from Cincinnati to Chattanooga.

10. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. Cincinnati, New Orleans and Texas Pacific Railway and the Louisville and Nashville, in connection with the Nashville, Chattanooga and St. Louis Railway, actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

11. Q. The rates from Cincinnati to Chattanooga are as follows:

[Classes. Rates in cents per 100 lbs.]

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

192 The distance from Cincinnati to Chattanooga is 336 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. The rates from Cincinnati to Chattanooga, as cited in this question, are just and reasonable when the distance, the volume of the traffic, the physical condition of the roads, and the comparison with rates in other portions of the South are considered.

12. State what were the proportions received by the different carriers out of the rates from Cincinnati to Atlanta in effect in November, 1892.

A. The proportions were as follows:

Class 1.	Cin. Sou	65.2
	W. & A	31.1
	Total	107
Class 2.	Cin. Sou	65.2
	W. & A	26.8
	Total	92
Class 3.	Cin. Sou	57.4
	W. & A	23.6
	Total	81
Class 4.	Cin. Sou	48.2
	W. & A	19.8
	Total	68
Class 5.	Cin. Sou	39.7
	W. & A	16.3
	Total	56
Class 6.	Cin. Sou	32.6
	W. & A	13.4
	Total	46
Class A.	Cin. Sou	19.9
	W. & A	8.1
	Total	28
193 Class B.	Cin. Sou	24.8
	W. & A	10.2
	Total	35.0
Class C.	Cin. & Sou	19.9
	W. & A	8.1
	Total	28.0

Class D.	Cin. Sou.	17.0
	W. & A.	7.0
	Total	24.0
Class E.	Cin. Sou.	34.0
	W. & A.	14
	Total	48.0
Class H.	Cin. Sou.	37.6
	W. & A.	15.4
	Total	33
Class F.	Cin. Sou.	34.0
	W. & A.	14.0
	Total	48.0

Those were the divisions via the Cincinnati Southern.

These are the divisions via the L. & N., the N. C. & St. L., and the W. & A.:

Class 1.	L. & N.	50.2
	N. C. & St. L.	125.7
	W. & A.	31.1
	Total	107.0
Class 2.	L. & N.	43.1
	N. C. & St. L.	22.1
	W. & A.	26.8
	Total	92.0
Class 3.	L. & N.	37.0
	N. C. & St. L.	19.5
	W. & A.	23.6
	Total	81.0
Class 4.	L. & N.	31.9
	N. C. & St. L.	16.3
	W. & A.	19.8
	Total	68.0
Class 5.	L. & N.	26.2
	N. C. & St. L.	13.5
	W. & A.	16.3
	Total	56.0

Class 6.	L. & N.	21.5
	N. C. & St. L.	11.1
	W. & A.	13.4
	Total	46.0
Class A.	L. & N.	13.2
	N. C. & St. L.	6.7
	W. & A.	8.1
	Total	28.0
Class B.	L. & N.	16.4
	N. C. & St. L.	8.4
	W. & A.	10.2
	Total	35.0
Class C.	L. & N.	13.2
	N. C. & St. L.	6.7
	W. & A.	8.1
	Total	28.0
Class D.	L. & N.	11.2
	N. C. & St. L.	5.8
	W. & A.	7.0
	Total	24.0
195 Class E.	L. & N.	22.5
	N. C. & St. L.	11.5
	W. & A.	14.0
	Total	48.
Class H.	L. & N.	24.9
	N. C. & St. L.	12.7
	W. & A.	15.4
	Total	53.0
Class F.	L. & N.	22.5
	N. C. & St. L.	11.5
	W. & A.	14.0
	Total	48.0

13. Q. State what said proportions received by the Western & Atlantic amounted to in cents per 100 lbs. on each of the classes.

A. The proportions were as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.51	3.88	3.42	2.87	2.36	1.94	1.17	1.48	1.17	1.01	2.03	2.23	2.03

14. Q. Did the proportions which said Western & Atlantic Railroad received on each of said different classes of freight shipped from Cincinnati or other Ohio River points via Chattanooga, destined to Atlanta, in 1892, exceed the additional cost to said Western & Atlantic Railroad of the movement of said freight?

A. The proportions which the Western & Atlantic received on the different classes of freight shipped from Cincinnati and other Ohio River points destined to Atlanta in 1892 exceeded the additional cost to the Western & Atlantic Railroad of the movement of said freight.

15. Q. I have shown above the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, and Acworth. What were the proportions received by said Western & Atlantic Railroad on each of said classes of freight shipped from Cincinnati and other Ohio River points via Chattanooga destined to each of said stations?

A. The proportions accruing to the Western & Atlantic Railroad on traffic from Cincinnati destined to Western & Atlantic stations were as follows from Chattanooga:

196	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	33	30	27	24	19	14	14	14	9.5	9	20	26	19
Adairsville	36	33	29	26	20	15	15	15	9.5	9	20	26	19
Kingston	39	36	31	28	21	16	16	16	10	9.5	21	28	20
Cartersville	42	38	33	29	22	17	17	17	11	10	22	29	21.5
Acworth	48	42	37	31	24	19	19	19	12	11	24	31	23

16. Q. What did those proportions amount to in cents per ton per mile on each of said classes to each of said stations?

A. The foregoing proportions amounted to the following per ton per mile:

	1.	2.	3.	4.	5.	6.
Calhoun	11.00	10.00	9.29	8.00	6.33	4.66
Adairsville	10.29	9.43	9.00	7.43	5.71	4.29
Kingston	9.75	9.00	7.75	7.00	5.25	4.00
Cartersville	9.33	8.44	7.33	6.44	4.88	3.78
Acworth	9.32	8.16	7.18	6.02	4.66	3.69

	A.	B.	C.	D.	E.	H.	F.
Calhoun	4.66	4.66	3.00	2.83	6.33	8.00	12.00
Adairsville	4.29	4.29	2.71	2.57	5.71	7.43	10.86
Kingston	4.00	4.00	2.50	2.37	5.29	7.00	10.00
Cartersville	3.78	3.78	2.44	2.22	4.88	6.44	9.55
Acworth	3.69	3.69	2.33	2.13	4.66	6.02	8.93

17. Q. Name the various transportation lines, all rail or all water, or part rail and part rail and part water that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following all-rail lines competed in 1892 for the transportation of freight, covered by numbered and lettered classes, to Atlanta from Ohio River points:

Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway to Chattanooga, thence Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Cincinnati, New Orleans & Texas Pacific Railway in con-
197 nection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia via Jellico.

The Louisville Southern Railway in connection with the Cincinnati, New Orleans & Texas Pacific Railway and the Western & Atlantic Railroad, the East Tennessee, Virginia & Georgia Railroad, or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Kansas City, Memphis & Birmingham and the Georgia Pacific Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company, the Kansas City, Memphis & Birmingham, and the Georgia Pacific Railway.

The Illinois Central Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Memphis & Charleston and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railway.

The Mobile & Ohio Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East

Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Mobile & Ohio Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railway.

198 From Mississippi River crossings:

The Memphis & Charleston Railroad in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Western Railway of Alabama and the Atlanta & West Point Railroad.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Louisville & Nashville Railroad in connection with the Georgia Pacific Railway.

The Kansas City, Memphis & Birmingham Railroad in connection with the Georgia Pacific Railway.

The Illinois Central Railroad in connection with the Georgia Pacific Railway.

The Yazoo & Mississippi Valley Railroad in connection with the Georgia Pacific Railway.

The Vicksburg & Meridian Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railway.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railway.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad and the Western & Atlantic Railroad.

From South Atlantic ports:

The Central of Georgia Railway direct.

The Port Royal & Augusta Railroad in connection with the Georgia Railroad.

The Savannah, Florida & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The South Carolina Railroad in connection with the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Port Royal & Augusta Railroad and the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Savannah, Florida & Western Railway and the East Tennessee, Virginia & Georgia Railway.

199 The Atlantic Coast Line in connection with the Richmond & Danville Railroad.

The Seaboard Air Line direct.

From Virginia cities:

The Seaboard Air Line direct.

The Richmond & Danville Railroad direct.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Atlantic Coast Line in connection with the Seaboard Air Line.

From Eastern cities, all rail:

The Baltimore & Ohio Railroad in connection with the Richmond & Danville or the Atlantic Coast Line or the Seaboard Air Line.

The Pennsylvania Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad, the Western & Atlantic Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad, and the Western & Atlantic Railroad.

The Philadelphia & Reading Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

From Eastern cities, rail and water:

The Old Dominion Steamship Company in connection with the Seaboard Air Line or the Norfolk & Western or the Atlantic Coast Line.

Ocean Steamship Company in connection with the Georgia Railroad.

200 The Clyde Line in connection with the South Carolina & Georgia Railroad and the Georgia Railroad.

The Clyde Line in connection with the Seaboard Air Line or the Norfolk & Western Railroad or the Atlantic Coast Line.

The Merchants & Miners Transportation Company in connection with the Seaboard Air Line or the Norfolk & Western Railroad or the Atlantic Coast Line.

The Bay Line in connection with the Seaboard Air Line.

18. Q. Are the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroad under any common control or management? If so, what is it?

A. They are not.

19. Q. Are the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under any common control or management?

A. They are not.

20. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so, to what, extent by competition.

A. Rates from Ohio River points to Atlanta are controlled by competition and that to a considerable extent. First, competition of rail lines actively and actually engaged in the carriage of freight between Ohio River points and Atlanta has its effect upon the rates. Second, competition of markets, Cincinnati, Louisville, Evansville, and Cairo with Eastern markets, Baltimore, Philadelphia, New York, and Boston,

which enjoy low water rates to the ports plus the rates of the inland carriers, affect the rate from Ohio River points.

21. Q. State whether or not there has been and can be carried from Cincinnati, Ohio, to Baltimore and other Eastern cities, via the trunk lines, and then by independent steamships or sailing vessels to Southern ports, and then to Atlanta by railroads wholly within the State of Georgia, and whether such shipments have been made and can be made without issuing through bills of lading.

A. Shipments have been made and can be made from Cincinnati to Atlanta, via the routes indicated in the question, without issuing through bills of lading.

22. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and thence by steamship or sailing vessel, thence by the Georgia railroads to Atlanta, control to any extent the rate which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

201 A. Rates which have been made and can be made by the trunk lines from Cincinnati to Atlanta via the route indicated in your question are in a measure potent in fixing the rates via the direct rail lines from Cincinnati to Atlanta.

23. Q. State whether or not competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

24. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as is sufficient to affect the rates charged by the two rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no such competition at Calhoun, Adairsville, Kingston, and Acworth. At Cartersville and Marietta there is a slight indirect competition, but not of such a character as is sufficient to affect the rates charged by the direct rail lines.

25. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I know of nothing else which is material to the issue.

Cross-examination by Mr. SHAVER:

1. Q. Cannot the lines which you have named in your direct examination from Cincinnati to Atlanta all be extended to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combination of those lines with the Western Atlantic roads as the terminal carrier.

A. They could not be and preserve the same relative commercial conditions that affect the Western and Atlantic in its carriage to Atlanta.

2. Q. They could be formed, could they not?

A. They could be figured up, but at quite a serious loss to the Western and Atlantic road, without any relative advantage to those communities.

3. Q. Is not traffic transported from Cincinnati over the Louis-
202 ville & Nashville road, the Nashville, Chattanooga and St. Louis road, and the Western and Atlantic road to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading naming an aggregate through rate to those points?

A. Well, I could not right off hand say whether they issue the through bills of lading to our stations or not. I know that they have rates which they publish to our local points.

4. Q. Through rates?

A. Yes, sir, through rates; but as to whether they enter those on the bills of lading, I really would be unable to tell you this minute.

5. Q. Is not traffic transported from Cincinnati by the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under through bills of lading to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. I will have to make the same answer to that question.

6. Q. Is not traffic transported by that line under through rates to those points from Cincinnati?

A. I understand that they publish in Cincinnati through rates to those points?

7. Q. Is it not a general rule that the short line fixes the rate to given points.

A. That is the general rule. That has been the general rule, but within the last few years the rates have been made by concert of the road after determining what competition of markets as well as the competition of routes required as being just to the various communities, and the short line you may say has not been regarded in the last few years.

8. Q. The routes, then, from Cincinnati to Atlanta are established by the concert of roads?

A. They are established after the competitive forces have been ascertained, the lines which have been brought in by those competitive forces adopting the rates which have been forced by competition. There is a general agreement, in other words, that whenever rates are forced by competition we will all make between two points.

9. Q. Are not the rates from Cincinnati to Atlanta by all lines the same?

A. That is what I understand.

10. Q. Are not those rates the same now as they were in 1892 and when the Southern Railway and Steamship Association was in existence?

A. I think they are substantially the same—substantially they
203 have been the same—minor changes here and there of a class, but substantially, I think, about the same.

11. Q. Were not those rates originally promulgated by the Southern Railway and Steamship Association?

A. I believe they were.

12. Q. Is it not true that whatever rates were promulgated by that association were agreed to by the lines and the roads members of such association and participating in such rates?

A. I think they were.

13. Q. What roads besides the Western and Atlantic is Cartersville located on?

A. It is the terminas of the East and West road of Alabama.

14. Q. Does not that road make connection with the various other roads between Pell City and Cartersville and its terminus at Pell City?

A. Yes, sir; between Cartersville and its terminus.

15. Q. At what points and what road?

At Rockmart and Piedmont it is crossed by the Southern Railroad; at Cedartown by the Chattanooga, Rome and Columbus.

16. Q. Can not lines be formed over those various roads from Cincinnati to Cartersville?

A. Well, I presume they could by consent, but my understanding has been that the East and West road has declined to accept that business except on payment of its full local from junction points to Cartersville.

17. Q. My question was whether lines could not be formed.

A. They could be formed by the consent of the roads in question if they chose.

18. Q. On what roads besides the Western and Atlantic is Kingston located?

A. It is located on our branch roads, the Rome roads; we own the branch that runs from Kingston over to Rome.

19. Q. Does not that branch road have connection with various other roads; and if so, at what points and with what roads?

A. At Rome with the Southern Railway and the Chattanooga, Rome and Columbus Railroad.

20. Q. Could not lines be formed with those roads from Cincinnati to Kingston?

A. No, sir; we would not agree to form a line.

21. Q. Could they not be formed if the carriers were willing?

A. As a matter of fact, as a physical possibility, of course they could, if our road chose to do so to its own detriment.

204 22. Q. The number of lines that could be formed between two given points, if you go far enough away from the direct route, would be almost unlimited, would it not?

A. Yes, sir.

23. Q. As a general rule, is not the natural tendency of a material reduction in rate to a given point towards improving and increasing the business at that point?

A. Well, I do not know that I would be willing to say that that would be the controlling factor, because it might to a great many towns, but there are other points that the location is such that their territory only needs a certain amount of the various kinds of goods and they would not take any more whether the rate were reduced or whether it stood.

24. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material redaction in rates to a given point towards improving and increasing business at that point?

A. Well, that would depend altogether on the territory or geographical location of the town. I do not see how you can lay down a general rule that would cover it. You might take one point where there were conditions that were affected by the water and rail transportation that would tend to greater distribution. There are others where the transportation facilities are limited and they supply naturally the local trade around; and, as a general rule, the first class of cases the business would increase,

and, as a general rule, in the second class of cases the business would not be affected to any degree that I could imagine; that is, not appreciably.

25. Q. As a general rule, and in the absence of exceptional conditions, is not the natural tendency of a material reduction in the rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population.

A. Well, I would answer that pretty much like I did the previous question. That to take points like Atlanta, Rome, and Macon—they have rail lines passing from point to point—it would enable them to do it. But you take a point like Barnesville or Conyers, on the Georgia Railroad, or Calhoun, on the Western and Atlantic road, and they supply simply local trade around in their counties. I do not think it would tend at all in those cases to increase the volume of the trade of those places.

26. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does
205 not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. I should say that could be laid down as a rule.

27. Q. If the rate from Cincinnati to the shorter-distance points—Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta—were made not higher than those to Atlanta, would not that enable the local merchants at those intermediate points to compete more successfully with the merchants at Atlanta for business at those points and in adjacent territory?

A. I do not think so, because the merchants in Atlanta do not, to any appreciable degree, ship except to the merchants at Marietta and Acworth. They do not ship to individual parties. In other words, a man in Atlanta does not ship to a farmer who lives out in the country two miles from Acworth, but he ships to the Acworth merchants himself and the Acworth merchants are really benefitted by being able to buy from Atlanta for this reason. He can give his order by wire at 12 o'clock to-day for five boxes of bacon, for instance, and to-morrow morning about 11 o'clock those boxes of bacon are there ready for his trade. If he orders them from Chicago or Cincinnati, he has got to wait probably just for a small, less than carload, shipment as much as a week before he can get it there. So that Atlanta does not hurt these towns, but is a real convenience to those towns. She furnishes their goods so much quicker than they can get them from Cincinnati and Louisville.

28. Q. Can you haul goods from Cincinnati to those points to Atlanta and from Atlanta back to those points quicker than you can haul them to those points in the first instance?

A. I suspect probably you can. The through schedules are made on time freight, and they operate right straight on through, and with Acworth, or Calhoun, for instance, it is transferred at Chattanooga and then put on the local freight and goes down. I would say that it could be probably a day or more quicker to ship to Atlanta. Although to a number of stations on the Western and Atlantic probably that would not be the case. It is a question that I have not looked into as to the exact time, but to the lower stations I think I could.

29. Q. You stated in your direct examination that the reduction in rate to these intermediate points would not benefit those points, because they would amount to an insignificant sum on a suit of clothes, etc. While that might be a matter of very small moment to the consumer, would not such reductions benefit the persons who sell large quantities of these goods?

A. I do not see that it would be any material benefit to the
206 merchants. Certainly it would not be as great a benefit to the merchants as it would be a loss to the road, and it would not enable a merchant to hold his trade any more than he now holds it to those papers.

30. Q. Are not through shipments made from Cincinnati to merchants at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. I think they are.

31. Q. Does the Georgia Railroad Commission undertake to establish through rates on interstate commerce or any proportion of any such through rates?

A. No, sir.

32. Q. Do they not confine their operations in that respect to fixing rates on traffic between points wholly within the State of Georgia?

A. They do, except in the case of our own roads. The Western and Atlantic road, when that road was leased to the Nashville, Chattanooga and St. Louis Railway Company, a section of the lease act provided that the rate over the entire length of the Western and Atlantic road should be no greater than the rate prescribed by the Georgia Railroad Commission; consequently our local tariff, and upon the local tariff would be based the rates to all local stations, are made the standard tariff of the State of Georgia.

33. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

34. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, and Calhoun local rates?

A. Yes, sir.

35. Q. I believe you stated in your direct examination that the expense to the carrier on strictly local hauls per ton per mile was much greater than on long through hauls for the same distance?

A. Yes, sir.

36. Q. You stated in your direct examination that the proportions of the Western & Atlantic Railroad of rates on goods from Cincinnati to Atlanta and also to intermediate stations between Chattanooga and Atlanta exceeded the add'tional cost of the service?

A. Yes, sir.

37. Q. Are the rates from Cincinnati to Calhoun, Adairsville, Cartersville, Acworth, and Marietta reasonable in and of themselves?

207 A. I think they are.

38. Q. Are the lower rates from Cincinnati through those intermediate points and for the longer hauls through those points to Atlanta, also, in your opinion, reasonable in and of themselves?

A. Yes, sir.

39. Q. Is a rate reasonable in and of itself which does not yield the

carrier a proper remuneration over and above the cost of service of carriage?

A. I should say not. If carried for less than cost, it would be unreasonably low.

40. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or expense of the service or carriage?

A. Well, it is very hard to determine regarding each particular shipment. Proba'ly it is impossible to determine regarding each particular shipment whether it, considered by itself, is remunerative or not. There are so many conditions attending the running of trains and so many cars that an engine can carry, and things of that kind, that I do not see how we can lay down a general rule that would cover the case.

41. Q. Is not the expense of the service of carriage an element to be considered in determining whether a rate or set of rates is reasonable?

A. In general, yes.

42. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Well, I should say that is a factor.

43. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Necessarily so, other things being equal.

44. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. As a general proposition, yes.

45. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbeds, etc., greater the greater the length of the haul?

A. Yes, sir; the more miles to be traversed the more the wear and tear on the tracks and things of that kind, as a general proposition.

46. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. All other things being equal, I should say so.

208 47. Q. Other things being equal, does it not require more locomotives and cars and crews for the running of trains on a long road than on a short one?

A. That would vary with the length of the road quite materially.

48. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. The character of the country being the same, whether a plain country or mountains, I should say so.

49. Q. Would higher rates be charged from Cincinnati to Atlanta but for competition?

A. Yes, sir.

50. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction were observed *by observed* by all the roads or lines from a given point to a given point, would it be necessary for any of those roads or lines to depart from this

rule in order to retain its share of the traffic and prevent diversion of its traffic to other roads or lines?

A. Well, I do not know that I could say whether it would or not, there being so many varying conditions that affect the traffic over one line or another. A very serious question to consider would be how much was each line's proportion*ed*, and there would be a big dispute. One line might be getting what the other lines thought was its proportion and it did not think it was, and if it thought that the other roads were getting a part of its proportions it would probably reduce its rates in order to get back its proportions? That is how these competitive forces work, and I think that would be the case, as a general rule.

51. Q. How long have you been engaged in the railroad business east of the Mississippi and south of the Virginias and the Ohio Rivers?

A. Something over twenty years.

52. Q. Has the greater charge for the shorter than the longer haul, over the same line, in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer distance point?

A. I do not know that it has, sir, of my own observation.

Redirect examination by Mr. BAXTER:

209 1. Q. Is it possible to charge as much from Cincinnati to Atlanta as is charged from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. No, sir.

Re-cross examination:

1. Q. Why is it not possible?

A. Because the competing lines have lower rates, and if we advance the rates we would get none of the business.

2. Q. It would divert the traffic?

A. Divert the traffic to competing lines.

3. Q. Suppose the rates by all the lines were advanced, would that prevent it being diverted?

A. Not if it were the same by all the lines, but you see what a number of lines there are, and I do not think it is possible.

4. Q. You stated that the rates from Cincinnati to Atlanta would be higher but for competition. Is that not the case as to all the lines from Cincinnati?

A. Yes, sir.

NASHVILLE, TENNESSEE, *July 16, 1897.*

R. E. LUTZ, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. R. E. Lutz; residence, Montgomery, Alabama; age, 46; freight traffic manager of the Atlanta and West Point Railroad, and the Western Railway of Alabama.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. In the transportation and traffic about twenty-eight years. I first started out as telegraph operator, then as local agent, then as train dispatcher, then as contracting freight agent, then as chief clerk in the general freight office, and afterwards general agent, and then traffic manager.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

210	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	6
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The reduction of rates to Western and Atlantic Railroad stations, as ordered by the Interstate Commerce Commission, would have the effect of reducing to such an extent the proportions that accrue to the Western and Atlantic Railroad. The entire reduction as ordered by the Interstate Commerce Commission must come out of the proportion that accrues to the Western and Atlantic Railroad, and therefore would make quite a serious reduction in the revenue of the Western and Atlantic Railroad, without affecting in one way or the other the revenue of the lines to Chattanooga. To Marietta, Georgia, for instance, on a shipment from Cincinnati the Western and Atlantic Railroad now receives for its proportion 51 cents per hundred pounds of first class, while a reduction of 20 cents decreases this revenue practically 40 per cent with the corresponding reduction on other classes.

While the reductions ordered would make such deep inroads on the revenues of the Western and Atlantic Railroad, it would not make such a difference in the through rates as to have the effect of increasing the volume of business. The great majority of shipments made from Cincinnati and like distributing centers, to small towns, such as the stations on the Western and Atlantic Railroad, are less than car load lots, and therefore embraced in the first six classes.

You can appreciate the improbability of a reduction causing an increase in the volume of business when we consider, for instance to Marietta, where the reduction is the greatest, it would only amount to two cents on a suit of clothes, estimating the weight thereof at ten pounds; and a small fraction of a cent on a hat or other light or miscellaneous high

class goods. That such slight difference in the cost of goods would increase consumption is entirely improbable.

211 4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1893, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not, in your opinion, said rates are just and reasonable, or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I believe the rates from Cincinnati to Western and Atlantic Railroad stations named to be just and reasonable because the rate per ton per mile does not lead me to believe them unreasonable in themselves and because they are not higher than are charged from other points of distribution to stations on other roads under similar circumstances and conditions.

I give you below the rates and distances from New Orleans, Louisiana, to local stations on the Western Railway of Alabama, and from Mobile, Alabama, to Western and Atlantic stations:

From New Orleans, La., to—	Mi.	Classes.												
		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Shorters, Ala	343	117	105	92	75	64	49	37	42	33	26	62	49	60
Milstead	348	121	108	94	76	65	50	38	43	35	28	63	51	64
Chehaw	359	127	113	98	78	67	52	38	44	36	29	65	56	68
Loachapoka	372	125	108	95	80	66	53	35	46	38	30	61	58	66
Notasulga	366	128	111	98	80	67	53	36	45	37	30	62	57	68

212 From Mobile, Ala., to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H	F.
Calhoun, Ga	413	113	96	83	68	59	47	30	37	27	22	51	53	46
Kingston	394	118	96	83	68	59	47	30	37	27	22	51	53	46
Marietta	375	113	96	83	68	59	47	30	37	27	22	51	53	46
Adairsville	404	117	99	86	71	61	48	31	38	27⅝	22½	53	56	47
Cartersville	403	117	99	86	71	6	48	31	38	27⅝	22½	53	56	47
Acworth	390	119	101	88	73	62	49	32	39	28	23½	54	58	48⅝

5. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati, New Orleans and Texas Pacific Railway and the Louisville and Nashville Railroad are the two most active competitors of freight from Cincinnati to Chattanooga. The Chesapeake and Ohio Railroad, the Chicago, Hamilton and Dayton Railway, the Baltimore and Ohio Southwestern Railway, in connection with the Norfolk and Western Railway through Kanovan, West Virginia; Ironton and Portsmouth, Ohio, likewise respectively compete—Cincinnati to Chattanooga—especially now that the association has been disbanded, under which a territorial division of business was attempted between Western and Eastern lines.

Not an impracticable route for business, Cincinnati to Chattanooga, is via the Ohio and Mississippi rivers from Memphis and then via the Memphis and Charleston Railroad. There is also water competition via the Ohio and Tennessee rivers.

6. Q. The distance from Cincinnati to Chattanooga is 356 miles, and the rates from Cincinnati to Chattanooga are as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	34	38

State whether, in your opinion, said rates are just and reasonable, or unjust and unreasonable, and give your reasons for any opinion you may express.

A. The rates named from Cincinnati to Chattanooga are, in
213 my opinion, just and reasonable. They are in fact somewhat lower than would be but for active competition by the all-water route via the Ohio and Tennessee rivers. For instance, we find that the rates to Chattanooga from Mobile, a distance of 419 miles, to be as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
93	78	67	54	47	37	20	27	20	16	39	39	32

And the rates are the same from Mobile to Opelika, a distance of 246 miles.

We also find rates from Lynchburg to Nashville, Tennessee, a distance of 355 miles, to be as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
84	79	64	50	43	37	24	34	28	27	45	52	55

It is unnecessary to state that the rates from Cincinnati to Atlanta, a distance of 138 miles further than Chattanooga, are considerably higher than to Chattanooga; more so in fact than would be justified by the difference in distance alone. It is here seen that under similar circumstances and conditions, the rates from and to other points are, if anything, greater than from Cincinnati to Chattanooga.

7. Q. Name the various transportation lines all rail, or part rail and part water, that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The competition from all territories to Atlanta is keen, and I herewith mention a number of lines competing from various territories in 1892 and at the present time from the Ohio River.

The Cincinnati, New Orleans and Texas Pacific Railway in connection with the Western and Atlantic Railroad.

The Southern Railway, or the Chattanooga, Rome and Columbus road.

The Louisville and Nashville Railroad, in connection with the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad.

The Illinois Central Railroad, and the Ohio Valley Railroad in connection with the Memphis and Charleston Railroad, or the Kansas City, Memphis and Birmingham Railroad and their connections, the Western and Atlantic Railroad, the Southern Railroad and the Central Railroad of Georgia.

214 The Mobile and Ohio Railroad in connection with the Memphis and Charleston Railroad and the Kansas City, Memphis, and Birmingham Railroad and their connections, the Southern Railway from Winona, Mississippi, the point of connection with the Illinois Central Railroad or West Point, Mississippi, the point of connection with the Mobile and Ohio, and the Western of Alabama, and Atlanta and West Point Railroad from Opelika, the point of connection between the Central of Georgia, also form a long route competing for business from the Ohio River.

From Mississippi River points, St. Louis to New Orleans inclusive, the same lines compete as from the Ohio River with the addition of the Missouri Pacific Railway and branches, the St. Louis, Alton, and Terre Haute, and the Alabama and Vicksburg, the New Orleans and Northeastern, the Alabama Great Southern, and the Mobile and Birmingham.

I do not suppose it is desirable to enumerate the numerous lines north or west of the Ohio and Mississippi rivers that enter into competition to Atlanta.

From Eastern territory lines compete for Atlanta business via Cincinnati in connection with the Louisville and Nashville Railroad, the Cincinnati, New Orleans and Texas Pacific Railway and through the all-rail gateways from Hagerstown, Alexandria, or Richmond in connection with the Norfolk and Western Railroad, the Southern Railway, the Atlantic Coast Line, and the Seaboard Air Line.

The four last named roads also actively compete from Norfolk, Portsmouth, Richmond and Wilmington for Eastern business brought to those ports by water from South Carolina and Georgia Railroad, the Charleston and Western Carolina, the Georgia Railroad, the Southern Railway and the Seaboard Air Line compete for Eastern business through the port of Charleston; and the Central of Georgia Railway, the Plant System, the Florida Central and Peninsular Railway, the Charleston and Western Carolina Railroad, the Georgia Railroad, the Georgia and Alabama Railroad, the Georgia Southern and Florida, the Western Railway of Alabama, the Atlanta and West Point Railroad, compete for Eastern business through the port of Savannah.

The principal steamship lines competing for Eastern business to Atlanta are:

The Clyde Line.
The Old Dominion Line.
The Merchants and Miners' Transportation Company.
The Merchants' Steamship Company.
The Mallory Line.

215 8. Q. State whether or not the Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actually and actively compete for the carriage of freight of the various classes to Atlanta; and if so, from what cities.

A. The Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actually and actively compete for the carriage of freight of the various classes to Atlanta from Birmingham, Alabama; Memphis, Tennessee; Kansas City, Missouri; and all points south thereof, including Mobile, Alabama; New Orleans, Louisiana; and all Texas and Mexico and California points. We also compete from Columbus, Macon, and Savannah, and other points in Georgia and Florida south thereof, as well as from Northeastern cities, via steamship through the port of Savannah.

9. Q. Does your railroad or its connections have agents at said cities to solicit freight for transportation to Atlanta?

A. The Atlanta and West Point Road and the Western Railway of Alabama or their connections have agents at said points from which we compete for freight to Atlanta who solicit freight for transportation to Atlanta.

10. Q. Does your railroad and its connections advertise in said cities for transportation of said freight to Atlanta?

A. The Atlanta and West Point Railroad and the Western Railway of Alabama or its connections advertise at said points above mentioned for the transportation of freight to Atlanta, Georgia.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commissioners from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from the East to Atlanta were agreed to in August, 1882, on the basis of certain rates from New York to South Atlantic coast points, which were practically the local rates of the steamship to which were added the published rates from the South Atlantic ports to Atlanta. These rates from the South Atlantic ports were made with reference to the rate required by the Georgia railroad commission from Savannah to Atlanta. The railroad commission's rate were not adhered to in every instance, as the figures in connection with the steamship arbitraries did not make what was considered a proper alignment for through rates. The Georgia commission rates, however, being carefully observed as a maximum, the rates from Boston and Philadelphia were made the same as from New York, where from Baltimore they were made a differential less.

216 12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. The rates from Cincinnati and Louisville to Atlanta are controlled to a certain extent by competition from Baltimore and other Eastern cities.

13. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and then by steamship or sailing vessels, and thence by the Georgia Railroad

to Atlanta, control the rates which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. The rates that have been and can be made by the trunk lines from Cincinnati to Baltimore and steamship or sailing vessels in connection with the Georgia road to Atlanta unquestionably influence the adjustment of rates, or control them to the extent that the direct lines could not afford to make the rates high' than at present, as to do so would enable the circuitous route to compete for the business at a profit.

14. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as is sufficient to affect the rate charged by the direct rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta which would interfere with the rates adopted by the direct lines from Cincinnati and from other Ohio River points, said rates being made with relation to the rates from other points of competition, such as Eastern cities.

15. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers has always been recognized as a factor in determining rates, its importance varying with the degree and nature of the competition. The simple fact that two roads pass through the same point does not necessarily make rates to that point different from what they would be if situated only on one line. This is particularly the case where two roads are really not in actual competition as to the termini drawing business from different sections. Water competition is an important factor in the adjustment of rates and invariably has the effect of making them low, on account of the exceeding cheapness with which water lines can carry freight.

217 16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross examination by Mr. SHAVER:

1. Q. In answering the direct interrogatories propounded to you, you read from a manuscript before you. How long ago did you prepare those answers?

A. About a month.

2. Q. You had been previously furnished with the interrogatories, had you?

A. Yes, sir.

3. Q. Might not a reduction in rates, which would be of no appreciable benefit to an individual consumer, greatly benefit a merchant who sells to a large number of consumers?

A. On certain classes perhaps it would. On others it would not. Take it on the lower classes, what we call commodity rates, B, C, D, and F, it would; on the higher classes, in my opinion, it would not.

4. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. I can not say that it would. In some cases it might, and in many cases it might not.

5. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at that point, and the increase of its population?

A. Not in all cases.

6. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates preferential to one of these localities and discriminatory against the other, benefit the one and injure the other?

A. There is no question but that is correct—that it does.

7. Q. You stated in your direct examination that, in your opinion, the rates involved in this case, from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable in and of themselves.

218 A. Yes, sir.

8. Q. Is that your opinion also as to the lower rates for the longer hauls from Cincinnati through those points to Atlanta?

A. Yes, sir.

9. Q. Do the Atlanta rates yield the carriers revenue in excess of the cost of the services of carriage?

A. In my opinion they do.

10. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I would not consider it a reasonable rate if it did not yield the carrier sufficient revenue over and above the cost of transportation.

11. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of the carriage.

A. That would be the only means we would have of knowing or trying to approximate as to about what the cost—that is trying to find out the cost as near as you can of carrying a ton of freight a mile or anything in excess of that—quite a number of things you have to take into consideration in saying whether that would be a profitable rate or not. For instance, you might at certain seasons of the year haul certain freight on certain trains that had to move anyhow, whether they had one car or whether they had twenty. In that case you could probably move a car of freight or a ton of freight at much less expense than you could had you to provide special service, or if it were at other times of the year. There are times when we accept certain freights that we would not accept at other times. I will take the local freight, for instance, that will run between Atlanta and West Point. That train has got to run; we have got to pay the engineer and we have got to pay the crew; and by adding on probably one or two more cars, or something of that kind, it probably would not add to the cost of the train but very little more. Now, if we had to go to work to perform a certain service for a

certain class of low freight, we often could not afford to haul it; we would not haul it; we turn down lots of it.

12. Q. The transportation of the hindmost car would cost the road as much for transporting it the same distance as it cost for the foremost car?

A. That would not always be the case for the very reason that the foremost car would not be switching back and forth as much, being attached to the engine, and the wear and tear of that car and the cost of repairs to that car, and the accidents to that car would not be as
219 great as the hindmost car that was constantly being switched from the point of shipment to the final destination. Going into the switch so often might cause a draw frame to be pulled out or a brake beam broken or something of that kind, and even if no accident happened to the car, there is obliged to be more wear and tear on that car.

13. Q. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

14. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

15. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

16. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, and roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

17. Q. Other things being equal, is not the cost of keeping the road in repair or good condition greater the greater the length of the road?

A. Yes, sir.

18. Q. Other things being equal, does it not require more locomotives and cars and crews for running a train on a long road than on a short one?

A. Yes, sir.

19. Q. Other things being equal, does not a distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital, greater the greater the length of the road?

A. Yes, sir.

20. Q. Is not the expense to the carrier, on strictly local hauls, greater per ton per mile than on long through hauls?

A. Yes, sir.

21. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Nearly 25 years.

22. Q. Has the greater charge for the shorter than the longer hauls over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. No, sir.

220 23. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads and lines, in your opinion, a reasonable rate?

A. Yes, sir.

24. Q. Are not the rates in question in this case from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made up of the through rates to Chattanooga plus the local rates from Chattanooga to those points?

A. In my opinion, the rates are made from Cincinnati to the above-mentioned points on the basis of the through rates to Chattanooga, Rome, Dalton, or Atlanta, plus the locals.

25. Q. They are combinations of through and local rates?

A. Yes, sir.

26. Q. Does the Georgia railroad commission undertake to establish through rates on interstate commerce or any proportion of such rates?

A. No, sir.

27. Q. Are not the rates on the Western and Atlantic Railroad from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

28. Q. Are not the rates from Atlanta over the Western and Atlantic road to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. Yes, sir.

29. Q. You named in your direct examination a number of lines that could be formed from Cincinnati to Chattanooga and Atlanta. Can not all those lines also be formed to Adairsville, Calhoun, Kingston, Cartersville, Acworth, and Marietta by combination with the Western and Atlantic Railroad?

A. Yes, sir.

30. Q. On what road is Kingston located besides the Western and Atlantic road?

A. The Rome Railroad.

31. Q. Does not the Rome Railroad make connection at Rome with a number of other roads?

A. Yes, sir.

32. Q. On what road besides the Western and Atlantic is Cartersville located?

A. The East and West Railroad.

33. Q. Does not that road make connection at various points between Cartersville and its terminus at Pell City with other roads; and if so, with what roads?

A. Yes, sir; it makes connection at Piedmont and at Pell
221 City; at Pell City with the Southern Railway, and at Piedmont with the Alabama Great Southern.

34. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through rates?

A. I think it is.

35. Q. And also under through bills of lading issued by the initial carrier?

A. Yes, sir; I believe so.

36. Q. Are not the rates by all the lines from Cincinnati to Atlanta the same?

A. Yes, sir.

37. Q. Is it not the rule that the short lines fixes the rate between two given points?

A. Yes, sir.

38. Q. Would higher rates be charged from Cincinnati to Atlanta than are charged but for competition?

A. Yes, sir; in my opinion they would.

NASHVILLE, TENNESSEE, *July 17, 1897.*

W. A. WINBURN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. W. A. Winburn; age, 37; residence, Savannah, Ga.; occupation, general freight agent of the Central of Georgia Railway.

2. Q. How long have you been connected with the railroad transportation business in the United States and in what capacities?

A. Since 1881, as clerk in the local freight office, clerk in the assistant general freight office, division freight and passenger agent, and general freight agent, respectively.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reduction in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

222	Class'es.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun.....cts..	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville.....	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville.....	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth.....	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta.....	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. I do not believe that it would increase the volume of traffic to any extent, because it would remove any probability of a jobbing business at any of these points and the trade would be confined to the local consumption of the citizens and surrounding farmers.

There would be one important difference in the situation. The heavy goods, instead of being distributed from Chattanooga, Rome, and Atlanta, as at present, would probably be bought at the Ohio and Mississippi

River markets and beyond, at least as far as the credit of the merchants at the local points would permit them to trade at these points.

The others would necessarily continue to buy at Atlanta, Chattanooga, and Rome, and pay a combination of the transportation charges higher than their competitors with better credit.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	63	46	36	42	33½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	58	65	62

223 State whether or not, in your opinion, said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I do not know what basis those rates are made on, but if they are not higher than the rates which competition has forced to Chattanooga, Rome, and Atlanta, plus the local rates prescribed by the State railroad commission, I consider them reasonably low.

5. Q. Name the various transportation lines, all rail or all water or part rail and part water, that actually and actively competed in 1892 and now compete, as well from Ohio River points as from other sections of the country, for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The Old Dominion Steamship Company.
The Southern Railway.
The Pennsylvania Railroad.
The Seaboard Air Line.
The Atlantic Coast Line.
The Norfolk and Western Railway.
The Clyde Steamship Company.
The South Carolina and Georgia Railroad.
The Georgia Railroad.
The Central of Georgia Railway.
The Ocean Steamship Company.
The Mallory Steamship Company.
The Plant System.
The Louisville and Nashville Railroad.
The New Orleans and Northeastern Railroad.
The Mobile and Ohio Railroad.
The Mobile and Birmingham Railroad.
The Illinois Central Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Memphis and Charleston Railroad.
The Alabama Great Southern Railroad.
The Nashville, Chattanooga and St. Louis Railroad.
The Cincin'ati, New Orleans and Texas Pacific Railroad, and The Western and Atlantic Railroad.

6. Q. State whether or not your railroad, namely, the Central of Georgia Railway Company, and its connections actually and actively compete for the carriage of freight of the various clas'es to Atlanta. If so, from what cities?

A. Yes, sir; from the Eastern seaboard and interior cities and from the Southern seaboard, particularly Savannah and Jacksonville.

224 7. Q. Does your railroad or its connection have agents at said cities to solicit said freight for transportation to Atlanta?

A. Yes, sir.

8. Q. Does your railroad or its connections advertise at said cities for the transportation of said freights to Atlanta?

A. Yes, sir.

9. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. In my opinion it continually and necessarily depresses rate.

10. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think I know of anything else.

Cross-examination by Mr. SHAVER:

1. Q. I notice, in answering the direct interrogatories propounded to you, you read your answers from a manuscript. How long ago did you prepare those answers?

A. The interrogatories were received on June 8 and the answers prepared on June 17.

2. Q. Do not the Atlanta merchants trade at Marietta, Acworth, Cartersville, Kingston, Adairsville, Calhoun, and in adjacent territory in competition with the local merchants at those points?

A. I think they sell goods to merchants at those points as well as receiving trade from citizens through their Atlanta houses.

3. Q. If the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were made no higher than the rates to Atlanta, would not this benefit the local merchants at those intermediate points in their competition with the Atlanta merchants?

A. I should think so.

4. Q. Where two localities are so situated with reference to each other that they compete for busines' in the same territory, does not a system of rates that is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

225 A. All of the conditions being the same, I should say they could, unquestionably.

5. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that place?

A. Not necessarily, I think.

6. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. It would be on raw material into a point where it is proposed to manufacture goods, and also true of manufactured products from such points. I do not think that a reduction in dry goods to a point such as is described above, use that as an illustration—taking either one of these points as an illustration—I do not think that a reduction in the rates on dry goods or on soap or on sugar would increase the consumption of those articles at those points in any degree at all. I do not believe it would bring about immigration or removal of parties from other sections to those points.

7. Q. Do not transportation rates enter into and affect the price of goods?

A. Yes, sir; generally.

8. Q. Do not lower rates therefore tend to bring about lower prices of goods?

A. On heavy commodities where prices are close a small difference in freight rates would affect the selling price, but in dry goods, or boots or shoes, or other traffic of that class, I do not think that a material difference in rates of freight would cause a variation in selling price. I do not believe if a man were paying $1 a hundred pounds on boots and shoes to a given point and sold his shoes at $1.25 a pair that if his rates were reduced to 85 . . . . . he would sell those shoes for less than $1.25.

9. Q. Might not the reduction in rates, which would not appreciably benefit an individual consumer, be of great benefit to the merchants who sells goods to a large number of consumers?

A. The seller would undoubtedly put an additional profit in his pocket.

10. Q. Does not the prosperity of a locality generally depend to a very great extent upon the prosperity of its merchants and business men?

A. I should say so.

226 11. Q. Is it not the tendency of lower prices of goods to bring these goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. I do not think that is always the rule, by any means.

12. Q. Is it true as a general rule?

A. I think not; I think it is exceptional.

13. Q. Do not people lay in supplies in proportion to their means?

A. That depends a good deal on the individual.

14. Q. In your direct examination you mentioned a number of lines that might be formed and which you said competed for traffic between Cincinnati and other points and Atlanta. By consent of the carriers, members of such lines, can not also all those lines be formed through to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun by combinations with the Western and Atlantic Railroad as the terminal carrier?

A. I imagine so.

15. Q. What other road is Kingston situated upon besides the Western and Atlantic?

A. A branch of the Western and Atlantic or, more properly, the Rome Railroad, which is operated by the Western and Atlantic Railroad.

16. Q. Does not that Rome Railroad make connection at Rome with other roads; and if so, what roads?

A. I think not. You mean does it make any through connection, have traffic relation with such roads?

17. Q. I did not mean that.

A. I do not know whether it makes a physical connection or not. I do not think that it has any traffic arrangements.

18. Q. Are there not other roads reaching Rome?

A. Yes, sir.

19. Q. What are they?

A. The Chattanooga, Rome and Columbus and the Southern Railway.

20. Q. What other roads reaches Cartersville besides the Western and Atlantic?

A. The East and West Road of Alabama.

21. Q. Between the terminus of that road at Pell City and at Cartersville, does not that road meet or cross other lines of railway?

A. Yes, sir; it crosses the Chattanooga, Rome and Columbus Railroad at Cedartown; the Southern Railway at Rockmart; and I think also the Alabama Mineral Railroad at Dukes; I think it also connects with the Southern Railway at Piedmont. The lines are not very fresh in my mind, but that is my recollection of the junction points.

227 22. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading and naming through rates to those points issued by the initial carrier at Cincinnati?

A. I cannot answer that from my own knowledge, but it is a general practice in the transportation of traffic to other local points in the South, and I have no doubt that it is also true at these stations.

23. Q. Are the rates involved in this case from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, in your opinion, reasonable in and of themselves?

A. If they are made on the bases prescribed in my direct interrogatory, I consider that they are.

24. Q. What is that basis?

A. Not exceeding the lowest combination.

25. Q. Of through and local rates?

A. Yes, sir.

26. Q. Are the lower rates from Cincinnati for the long hauls to those points to Atlanta also, in your opinion, reasonable in and of themselves?

A. Yes, sir.

27. Q. Do those rates pay the carrier anything in excess of the cost of the service of transportation?

A. The Atlanta rates?

28. Yes, sir.

A. I am of the opinion that they do.

29. Q. Is a rate, in your opinion, a reasonable rate which does not give the carrier a proper remuneration over and above the cost of the service of the carriage?

A. That depends on what we call a proper remuneration above the cost of the carriage. It seems to me there are a great many cases where a rate would be reasonable if it was above the cost of carriage to any extent, dependent largely on the movement of traffic in different directions.

30. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or the expense of the service of carriage?

A. The cost of the carriage is an uncertain quantity, varying almost with every class of freight and varying on the same classes of freight at different times and moving in different directions.

31. Q. I understand that. But that is not an answer to my question. My question is, Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the
228 expense of the service of carriage? In other words, can it be ascertained whether a rate pays the carrier a profit without first considering the expense or the cost of carriage?

A. As it is impossible to ascertain the cost of carriage in a great majority of cases, it is difficult to tell whether any particular rate or any particular traffic will pay a profit. We have as a guide the general tariffs. We know what the out-turn is from those tariffs, and we vary from them as necessity requires, and after all, when you come down to rate making on heavy commodities which require low rates of transportation, it is largely a rule of thumb process. By observation and experience we ought to know and try to know whether we will make or lose money on any shipment. If we think we are not going to make money, we will not take it. If we think it pays, we will take it. Whether we always make a profit we do not know.

32. Q. In your opinion, then, it is impossible for the carrier to ascertain whether a given rate is reasonably remunerative?

A. My answer had reference particularly to exceptionally low rates; that is, rates lower than the general standard rates. In cases of this kind, I think, it is frequently impossible to tell whether we will make or lose money by the carriage.

33. Q. Does not the cost or the expense of the service of transportation depend largely on the length of the haul?

A. All other things being equal, I would say that the cost of the haul per mile would decrease as the length of the haul increased. Not in any given ratio, but to some extent at least.

34. Q. Would not the aggregate cost increase as the length of the haul increased, other things being equal?

A. All other things being equal; yes, sir.

35. Q. All other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Yes, sir.

36. Q. All other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. I do not know about the consumption of fuel. I would not like to give an expert opinion as to that, as I do not handle any fuel.

37. Q. All other things being equal, is not the wear and tear on locomotives, cars, track, road-bed, &c., greater, the greater the length of the haul?

A. I think so.

38. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. Of that I know nothing about at all.

229 39. Q. Other things being equal, does it not require more locomotives and crews for the running of trains on a long road than on a short one?

A. I think that depends a great deal upon how much longer the long road is than the short road.

40. Q. Other things being equal, does not distance add to the cost of building a road; and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

41. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir.

42. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. That is my understanding.

43. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta local rates?

A. I think so.

44. Q. Are not local rates higher per ton per mile than long through-haul rates?

A. Not always.

45. Q. Is not that the general rule, that the local rates are higher per ton per mile than on the long through haul?

A. You mean local rates on short hauls are higher than through rates on long hauls?

46. Q. Yes, sir.

A. I should say so, all other conditions being the same.

47. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio rivers?

A. 16 years.

48. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in case of competition in transportation to longer distance points?

A. I can think of no such instance at present.

NASHVILLE, TENNESSEE, *July 19, 1897.*

GEORGE R. KNOX, a witness in behalf of the defendants, having been duly sworn, testified as follows:

230 Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George R. Knox; 52; general freight agent, Nashville, Chattanooga and St. Louis Railway; Nashville, Tenn.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. I was in the local freight office and in the accounting department for some time before entering the general freight office of the Nashville, Chattanooga and St. Louis Railway. I have been in the general freight

office since March, 1867, as subordinate clerk, chief clerk, assistant general freight agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reduction in cents per hundred pounds in rates from Cincinnati and other Ohio points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5½	5	7	8	9
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	12
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	17
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. In my opinion, if the rates to Western & Atlantic stations were reduced to the same as Atlanta it would simply result in the loss of that much revenue to the Western & Atlantic Railroad, for the reason that the volume of business could not be materially increased on account of such reduction, these stations being what might be termed consumptive rather than jobbing or distributing points.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

231 From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E	H	F
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	56	57	58
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates from Cincinnati to Western and Atlantic Railroad stations just and reasonable. They are made by adding the locals of the Western and Atlantic Railroad from Chattanooga to the rates from Cincinnati to Chattanooga and the rates from Cincinnati to Chattanooga are made the same rate per ton per mile as to Atlanta. The rates from Chattanooga to Western and Atlantic stations are as high as the standard rates fixed by the Georgia railroad commission and are from ten to fifty per cent less than the rates in force on many of the roads within the State of Georgia.

5. Q. State what voice, if any, the Western and Atlantic Railroad has in the making of rates from Cincinnati to Chattanooga?

A. It has none at all.

6. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga?

A. The Cincinnati, New Orleans, and Texas Pacific Railway and the Louisville and Nashville Railroad in connection with the Nashville, Chattanooga and St. Louis Railways, actually and actively compete for business from Cincinnati to Chattanooga.

And at times business is moved over the Cleveland, Cincinnati, Chicago and St. Louis Railway from Cincinnati, thence the Illinois Central to Memphis and thence the Memphis and Charleston to Chattanooga.

232 7. Q. The rates from Cincinnati to Chattanooga are as follows:

Classes.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
70	65	57	47	40	30	20	26	23	19	34	37	38

The distance from Cincinnati to Chattanooga is 336 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. The rate from Cincinnati to Chattanooga are just and reasonable for the reason that they do not allow the carriers an exhorbitant revenue for the service performed and are made the same rate per ton per mile as to Atlanta, and the rates compare favorably with the rates to other portions of the South.

8. Q. State what were the proportions received by the different carriers out of the rates from Cincinnati to Atlanta in effect in November, 1892?

A. The proportions received by the different lines out of the rates from Cincinnati to Atlanta are as follows:

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
C S	75.9	65.2	57.4	48.2	39.7	32.6	19.9	24.8	19.9	17	34	37.6	34
W & A	31.1	26.8	23.6	19.8	16.3	13.4	8.1	10.2	8.1	7	14	15.4	14
Total	107	92	81	68	56	46	28	35	28	24	46	53	48
L & N	50.2	43.1	37.9	31.9	26.2	21.5	13.2	16.4	13.2	11.2	22.5	24.9	22.5
N C & St L	25.7	22.1	19.5	16.3	13.5	11.1	6.7	8.4	6.7	5.8	11.5	12.7	11.5
W & A	31.1	26.8	23.6	19.8	16.3	13.4	8.1	10.2	8.1	7	14	15.4	14
Total	107	92	81	68	56	46	28	35	28	24	46	53	48

9. Q. State what said proportions received by the Western & Atlantic Railroad amounted to in cents per ton per mile on each of the classes?

A. The rates in cents per ton per mile received by the W. & A. Railroad, Chattanooga to Atlanta, out of the Cincinnati to Atlanta rates, are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.51	3.88	3.42	2.87	2.36	1.94	1.17	1.48	1.17	1.01	2.03	2.23	2.03

10. Q. Did the propositions which said Western & Atlantic Railroad received on the different classes of freight shipped from Cincinnati and

other Ohio River points via Chattanooga destined to Atlanta in 1892 exceed the additional cost to said Western & Atlantic Railroad of the movement of said freight?

233 A. Yes, sir; it did.

11. Q. What was the financial condition of the Western & Atlantic Railroad in 1892? Was it such as to enable it to sustain a loss equal to the amount of revenue that was derived by said road carried from Cincinnati and other Ohio River points via Chattanooga destined to Atlanta?

A. The financial condition of the Western & Atlantic Railroad in 1892 was not such as to enable it to sustain a loss equal to the amount of revenue that was received in the transportation of freight shipped from Cincinnati and other Ohio River points via Chattanooga to Atlanta. The operating expenses, maintenance of equipment, and the general expenses, together with the rental and taxes, exceeded the revenues of the Western & Atlantic Railroad in 1892. The receipts were $1,560,320.62. Operating expenses, rental, taxes, and amount expended for steel rails, crossties, new bridges, water stations, etc., amounted to $1,882,533.37.

12. Q. I have shown above the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta. What were the proportions received by the Western & Atlantic Railroad in cents per hundred pounds on each of said classes of freight shipped from Cincinnati and other Ohio River points via Chattanooga destined to each of said stations?

A. The proportions accruing to the Western & Atlantic Railroad in cents per hundred pounds on business from Cincinnati destined to Western & Atlantic stations were as follows:

From Chattanooga to—		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	(a)	33	30	27	24	19	14	14	14	9	8.5	19	24	18
Adairsville	(b)	36	33	29	26	20	15	15	15	9.5	9	20	26	19
Kingston	(c)	39	36	31	28	21	16	16	16	10	9.5	21	28	20
Cartersville	(d)	42	38	33	29	22	17	17	17	11	10	22	29	21
Acworth	(e)	48	42	37	31	24	19	19	19	12	11	24	31	23

13. Q. What did those proportions amount to in cents per ton per mile on each of said classes to each of said stations?

A. The foregoing proportions amounted to the following in cents per ton per mile:

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
(a)	11.00	10.00	9.00	8.00	6.33	4.66	4.66	4.66	3.00	2.83	6.33	8.00	12.0
(b)	10.29	9.43	9.29	7.43	5.71	4.29	4.29	4.29	2.71	2.57	5.71	7.42	10.8
(c)	9.75	9.00	7.75	7.00	5.25	4.00	4.00	4.00	2.50	2.37	5.25	7.00	10.0
(d)	9.33	8.44	7.33	6.44	4.88	3.78	3.78	3.78	2.44	2.22	4.88	6.44	9.3
(e)	9.32	8.16	7.18	6.02	4.66	3.69	3.69	3.69	2.33	2.13	4.66	6.02	8.9

14. Q. Please name the various transportation lines, all rail or all water or part rail and part water, that actually and actively competed in 1892 at Atlanta for transportation to that place of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F, whether such freight came from Ohio River points or other sections of the country.

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A. The following, all rail, competed in 1892 for the transportation of freight covered by the numbered and lettered classes to Atlanta from Ohio River points:

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway to Chattanooga, thence the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Cincinnati, New Orleans & Texas Pacific Railway in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad via Jellico.

The Louisville Southern Railroad in connection with the Cincinnati, New Orleans & Texas Pacific Railway and the Western & Atlantic Railroad, the East Tennessee, Virginia & Georgia Railroad, or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company, the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Illinois Central Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or
235 the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Mobile & Ohio Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia Railroad or the Georgia Pacific Railroad.

The Mobile & Ohio Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

From Mississippi River crossings:

The Memphis & Charleston Railroad in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Western Railway of Alabama and the Atlanta & West Point Railroad.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Louisville & Nashville Railroad in connection with the Georgia Pacific Railroad.

The Kansas City, Memphis & Birmingham Railroad in connection with the Georgia Pacific Railroad.

The Illinois Central Railroad in connection with the Georgia Pacific Railroad.

The Yazoo & Mississippi Valley Railroad in connection with the Georgia Pacific Railroad.

The Yazoo & Mississippi Valley Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railroad.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railroad.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad and the Western & Atlantic Railroad.

236 From South Atlantic ports:

The Central of Georgia Railway direct.

The Port Royal & Augusta Railroad in connection with the Georgia Railroad.

The Savannah, Florida & Western Railroad in connection with the Georgia Railroad.

The South Carolina Railroad in connection with the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Port Royal & Augusta Railroad and the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Savannah, Florida & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Atlantic Coast Line in connection with the Richmond & Danville Railroad.

The Seaboard Air Line direct.

From Virginia cities:

The Seaboard Air Line direct.

The Richmond & Danville direct.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Atlantic Coast Line in connection with the Seaboard Air Line.

From Eastern cities, all rail:

The Baltimore & Ohio Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Pennsylvania Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

237 The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Philadelphia & Reading Railroad, in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

From Eastern cities, rail and water:

Old Dominion Steamship Company, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Ocean Steamship Company, in connection with the Central of Georgia Railway.

The Clyde Line, in connection with the South Carolina & Georgia Railroad and the Georgia Railroad.

The Clyde Line, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Merchants & Miners' Transportation Company, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Merchants & Miners' Transportation Company, in connection with the Central of Georgia Railway.

The Bay Line, in connection with the Seaboard Air Line."

15. Q. File as Exhibits No. 7 in this case a statement giving the following information in relation to the Western and Atlantic Railroad for each year since the lease, to wit:

1. Gross earnings from operation.
2. Operating expenses.
3. Miscellaneous income.
4. Fixed or obligatory charges.
(a) Taxes.
(b) Interest on bonds.
(c) Other charges, interest, etc.
5. Expended on improvements in road and equipment.
6. Total freight revenue.
7. Number of tons carried of freight-earning revenue.
(a) Number of tons received from connecting roads and other carriers.
(b) Number of tons originating on the road.
8. Average distance haul of one ton.
9. Average receipts per ton per mile.
10. Freight earnings per train per mile.

A. I file the same herewith as Exhibit No. 7.

(The statement referred is hereto attached and marked Exhibit Number 7.)

238 16. Q. Are the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroads under any common control or management?

A. The Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroad are not under any common control or management. The Nashville, Chattanooga and St. Louis Railway is the lessee of the Western and Atlantic Railroads.

17. Q. Are the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under any common control or management?

A. They are not.

18. Q. State whether the rate on freight from the Ohio River points to Atlanta are controlled to any, and, if so, to what, extent by competition.

A. Yes, sir; the rate from Ohio River point' to Atlanta are controlled by competition. The rail lines actually engaged in the transportation of freight between Ohio River points and Atlanta has its effects upon the rates, as well as the competition, of markets at Cincinnati and other Ohio River points on the one hand and the Baltimore and other Eastern markets—New York, Boston, etc.—on the other.

19. Q. State whether freight has been, and can be, carried from Cincinnati, Ohio, to Baltimore, Maryland, and other Eastern cities via the trunk lines, thence by independent steamships or sailing vessels to Southern ports and thence to Atlanta by railroads wholly within the State of Georgia, and whether said shipments have been made and can be made without issuing through bills of lading.

A. Freight has been carried from Cincinnati to Baltimore or other Eastern cities, thence by independent sailing vessels to Southern ports and reshipped to interior points in Georgia as far north as Atlanta. But of late years shipment from Cincinnati proper via such routes has not amounted to much. Shipments could be made by this route without issuing through bills of lading. Bills of lading could be issued to the Southern coast ports and then reshipped, or parties could take the bill of lading to Baltimore and make their own arrangements with the sailing vessels and then reship. There is, however, considerable business shipped from points north and west of Cincinnati, via Baltimore and other Eastern ports, to Southern ports and reshipped to the interior, as against the direct line leading from the Ohio River, and at much less rates than charged by the direct rail lines.

239 20. Q. State whether the rates that have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities, and thence by steamship and sailing vessels, thence by the Georgia Railroad to Atlanta, control the rates to any extent which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. The rates as they now stand from Cincinnati to Baltimore in connection with the trunk lines, added to the rates from Baltimore to Savannah—that is, the regularly established steamship rates plus the established rates from the coast to Atlanta—would not cut the rate via the direct line, although such combinations are in a measure considered in fixing the

rates by the direct line, although, as stated in answer to the previous question, there is a large volume of business constantly moving from points north and west of Cincinnati via Baltimore and other Eastern cities and thence via South Atlantic ports, those rates being considerably less than can be made by the direct line through the Ohio River crossings, the rates from points north of the Ohio River being made by adding the rates to the river to the established rates south of the river.

21. Q. State whether competition between carriers, whether by rail or by water, substantially affect the circumstances and conditions under which the transportation of freight is conducted.

A. Yes, sir; competition between carriers, whether all rail or rail and water, affect the circumstances and conditions under which the transportation of freight is conducted.

22. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, as is sufficient to affect the rate charged by the direct all-rail lines from Cincinnati and other Ohio River points to those stations.

A. No, sir; there is no such competition at Calhoun, Adairsville, Kingston, and Acworth that is sufficient to affect the rate charged by the direct lines from Cincinnati, although at Cartersville and Marietta there is a slight indirect competition, but it is not sufficiently strong to affect rates charged by the direct lines to those points. However, all receive the benefit of the competitive rates up to Chattanooga, plus the locals from Chattanooga.

23. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

240 A. I think these questions and answers have covered the ground quite fully.

Cross-examination by Mr. Shaver:

1. Q. In the event that the Atlanta merchants sell goods at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and in the adjacent territory in competition with the merchants at those intermediate points, would not a reduction in rates to those points, which would make their rates not higher than the Atlanta rates, greatly benefit local merchants at those points in their competition?

A. Only to the extent that it might exclude the Atlanta merchants from such competitions. I think the effect of such an adjustment would be to absolutely exclude the Atlanta merchants, as they would have to pay the same rate into Atlanta as paid to the intermediate points, and in addition pay the local rates from Atlanta back to such intermediate points. The total freight that is paid by the Atlanta merchants would, I believe, eventually exclude them from competing at all with the local merchants.

2. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Frequently it does not have that effect. If the rates on flour, corn, hay, and hog products from the West to the Southeast were reduced one-half, I do not think it would have any material effect on the volume of

traffic, nor do I think if the rates on cotton from the Southeast to the seaboard or Eastern cities were cut in half that it would materially affect the volume of that traffic.

3. Q. Which is more beneficial to the business of a locality, high rates or low rates?

A. It depends altogether on the conditions surrounding it. Low rates on agricultural products from the West have proven very injurious to Tennessee farmers. They would be benefited if those rates were made higher.

In my opinion, the opening of many new Western lands and low rates made from the very fertile low-priced fields of the West and Northwest have materially and permanently lowered the values of the farm lands throughout Tennessee.

4. Q. As a general rule, in the absence of exceptional conditions, which are more beneficial to a locality, high rates or low rates?

241 A. Sometimes one and sometimes the other. The manufacturer likes to have low rates to get out with his products. He likes to have high rates into his territory from other territory—into his section on the like character of goods.

5. Q. Do not rates of transportation enter into and affect the price of goods sold by merchants?

A. On some classes the rate of freight does no doubt have a controlling influence on the price; on other classes it has very little to do with the price. Take, for instance, dry goods from New York to any of the Southeastern markets; or boots and shoes. If the rate of freight was cut half in two, the probability is that the consumer would pay the same price for dry goods, boots and shoes that he does now.

6. Q. Would not the merchant be benefitted?

A. The merchant's profit would be somewhat increased.

7. Q. Does not the general prosperity of a locality depend largely on the prosperity of its merchants and business men?

A. It does; and manufacturers, I would add, where it has them.

8. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. That is, the reduction in rates to a point will encourage the investment of capital at that point?

9. Q. I ask, if that is not the natural tendency.

A. No, sir; frequently the reverse.

10. Q. As a general rule, in the absence of exceptionally conditions, is not the natural tendency of a material reduction in rates to a given point toward the encouragement of the investment of capital at such point and the increase of its population?

A. No general answer can be given. In each instance the other conditions and surroundings of the particular town in question would, no doubt, enter largely into the result. Low rates on raw material for manufacturing purposes to a given point are beneficial. But, as heretofore explained, low rates on the manufactured goods to the same point, in competition with the local manufacturer, are injurious.

11. Q. Injurious to the local manufacturer?

A. Yes, sir; injurious to the local manufacturers, and, as explained

above, on agricultural products, low rates from the West to Tennessee points have proved injurious to the Tennessee farmers, while beneficial to the Tennessee consumers. So that low rates to any point while benefitting some classes of population must injure others, and whether
242 or not the entire community is benefitted by it depends on the preponderance or greater number of those who are benefitted or those who are injured.

12. Q. Are not the consumers in all instances benefitted by low rates on articles which they consume?

A. They might be benefitted in securing some of their supplies at slightly lower prices, although, as stated in the case of dry goods and boots and shoes from the East, possibly the consumer might get no benefit, but the jobber or merchant might receive some; but if these consumers should be employes of the manufacturing establishments which were injured by these low rates to their point, a reduction in their wages might more than offset the less price of the articles which they consume.

13. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir.

14. Q. You stated that, in your opinion, the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable. Is it also your opinion that the rates from Cincinnati for freight hauled through those points to Atlanta are just and reasonable?

A. It is.

15. Q. Do those Atlanta rates yield the carrier any revenue in excess of the cost of transportation?

A. They do.

16. Q. Would higher rates be made to Atlanta but for competition?

A. Yes, sir.

17. Q. Is a rate, in your opinion, reasonable which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. No; I do not think it is.

18. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. That is one of the factors that enters into the cost, but only one.

19. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. It is.

20. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

243 21. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

22. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. It is.

23. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. It does.

24. Q. Other things being equal, does not distance add to the cost of building the road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Where all things are equal that is true.

25. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on a long through haul?

A. It is.

26. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio rivers?

A. Continuously since December, 1865.

27. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. Well, that word "competition" is a very broad one. Sometimes there is competition of products as well as competition of lines, competition of markets, and letting the word "competition" include all branches of the subject, then I would answer that it has never been made except to meet competition—letting the word "competition" cover all branches of this subject; that is, competition of market, product with product, competition of line and line, and competition of rail with water.

28. Q. Is there competition of markets without there being also competition in transportation?

A. Yes, sir.

29. Q. Well, name an instance.

A. We have right on our own line here two towns selling the same product, competing with each other, shipping over the same road, but being local points. For instance, there is a pile foundry at South
244 Pittsburg, and another at Bridgeport. Both are local to our line, and both of which compete strongly with each other in selling their pipes to the markets of the country.

30. Q. Is there any greater charge for the shorter than the longer haul?

A. No; in that case the charge is the same.

31. Q. I am referring to cases of a greater charge for the shorter haul. Is that greater charge ever made except in the case of competition in transportation, to your personal knowledge?

A. I can not for the moment call to mind such a case, though I am quite sure there have been such cases. There is a case in point from Nashville to Hickman. There is only one line from Nashville to Hickman, and yet the rates to Hickman are less than to points this side of Hickman; there is only one line; that is competition of market with market. Nashville reaches Hickman, Kentucky, over the western division of our road; St. Louis reaches Hickman not only by rail but

also by the Mississippi River boats, at low rates, so that Nashville would be unable to sell any goods in Hickman, and therefore we were forced to make low rates from Nashville to Hickman. They were made to meet the competition at St. Louis and other markets reaching Hickman by river. We do not make as low rates to the other points this side of Hickman, notwithstanding there is only one road between here and Hickman, no other line from here to Hickman. I never heard of freight going from Nashville to Hickman except over our road.

32. Q. Is that not a case of competition between your line to Hickman and the lines from St. Louis to Hickman?

A. It is what I call competition of market with market.

33. Q. Does it not also involve the competition between transportation lines from different markets?

A. Indirectly, it does; yes, that is true. St. Louis has her low rates.

34. Q. Is not a rate under which traffic will move, and which is not so high as to divert the traffic from other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir; I think it is.

35. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other Northeastern cities to Nashville, would it be necessary for any one of those roads or lines to depart from this
245 rule in order to retain its share of the traffic and prevent diversion of its traffic to the other roads or lines?

A. It would; that is, it would be necessary to depart from that rule.

36. Q. In your direct examination, you named a number of lines which could be formed from Cincinnati to Chattanooga and also from Cincinnati to Atlanta, which lines from Cincinnati to Atlanta, you stated, competed for business between those cities. Can not all those lines be formed also to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combination with the Western and Atlantic Railroad as the terminal carrier?

A. They can.

37. Q. What other road is Cartersville situated on besides the Western and Atlantic?

A. The East and West road of Alabama.

38. Q. Does not that road cross or connect with other roads between Cartersville and its terminus at Pell City?

A. Yes, sir.

39. Q. Name those roads.

A. The East and West connects with the Southern Railway, western system, at Rockmart; with the Chattanooga, Rome and Columbus, at Cedartown; with the Southern Railway, the western system, at Piedmont; with the Alabama Mineral, of the Louisville and Nashville, at Dukes, and again with the western system of the Southern Railway at Pell City, and also with the Birmingham and Atlantic.

40. Q. Can not lines be formed from Cincinnati via those roads to Cartersville?

A. Such a thing might be geographically possible, but hardly commercially possible.

41. Q. What other road is Kingston situated on besides the Western Atlantic?

A. The Rome Railroad, now belonging to the Nashville, Chattanooga and St. Louis Railway.

42. Q. Does not that road connect with other roads at Rome and other points?

A. Yes, sir.

43. Q. With what roads and at what point?

A. With the Southern Railway running both north and south, and with the Chattanooga, Rome and Columbus, running north to Chattanooga and south to Carrollton.

44. Q. Are not the rates by all lines from Cincinnati to Atlanta the same?

A. Yes, sir.

246 45. Q. Are not the rates from Cincinnati to Atlanta now the same as they were when the Southern Railway and Steamship Association was in existence?

A. I think so.

46. Q. Is not Atlanta one of the competitive points—the rates to which were fixed by the Southern Railway and Steamship Association?

A. Yes, sir.

47. Q. Were not rates which were promulgated by the Southern Railway and Steamship Association made by consent of all the carriers who participated in such rates and were members of such association?

A. Well, of course, under the Southern Railway and Steamship Association agreements sometimes rates were made by the consent of all the carriers, and sometimes against the consent of some of them by the board of arbitration. I can not now say as to the Atlanta rates, whether it was by common consent or by arbitration.

48. Q. The roads voluntarily became members of that association, did they not?

A. Yes, sir; voluntarily, in one sense; either that or ruin; either some association or anarchy.

49. Q. Does the Georgia railroad commission attempt to fix through rates on interstate commerce or any proportion of said through rates?

A. Not to my knowledge; but in fixing rates within the State of Georgia from Savannah, New Brunswick, and other seacoast points, as well as from some of their junctions in the northern portion of the State, it does have the effect to a very large extent of fixing a great many interstate rates. For instance, the rate from Chicago to quite a number of points in Georgia have been built up by taking the rates from Chicago to Baltimore and steamer rates to Savannah and Brunswick plus the rates established by the Georgia railroad commission.

50. Q. That was the voluntary action of the lines fixing those rates and not the action of the Georgia railroad commission?

A. No, sir; the rates from Chicago to Baltimore are not made by roads in Georgia, neither are the steamer rates from Baltimore to Savannah or Brunswick; neither are those fixed by the Georgia railroad commission from Savannah to the interior; they made a total which the direct rail lines had to consider and meet. So their voluntary action was merely the meeting of a combination of rates which they had no voice in fixing.

51. Q. Do you consider the Georgia railroad commission rates just and reasonable?

247 A. In many cases I think they are too low. The truth of it is that a very large proportion of the mileage in Georgia has gone through receiverships in the last ten years.

52. Q. Is not traffic transported from Cincinnati over the Louisville and Nashville Railroad to Nashville and thence by the Nashville, Chattanooga and St. Louis Railway to Chattanooga, and thence over the Western and Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati?

A. Yes, sir.

53. Q. Is not traffic transported from Cincinnati via the Cincinnati, New Orleans and Texas Pacific Railway to Chattanooga and thence via the Western and Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati?

A. Yes, sir.

54. Q. Is not such traffic transported under through rates named in such bills of lading?

A. Yes, sir.

NASHVILLE, TENNESSEE, *July 22, 1897.*

GEORGE P. BILES, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George P. Biles, 40; occupation, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company; residence, Newport, Kentucky.

2. Q. How long have you been connected with the railroad transportation business in the United States, and in what capacities?

A. Since 1884, in various capacities, such as rate clerk; afterwards assistant general freight agent, and since October, 1895, general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel

248 the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. If the freight rates were reduced from Cincinnati to Calhoun, etc., it would not, in my opinion, have the effect of increasing or building up traffic at those points to any appreciable extent. My reason for this opinion is that a reduction in rates would have the effect of materially increasing the consumption of articles used at those points and in adjacent territories. The amount of business done at those points is not of great volume because of the limited population.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	49	32	27½	53	57	36
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	37
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	35
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	38
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	40
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	42

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

249 A. In my opinion, the rate from Cincinnati to Calhoun, etc., are just and reasonable within themselves. My reason for this opinion is that the rates from and to the points named are relatively in line with the rates existing from Cincinnati to other points similarly located in that section of the country.

5. Q. State what transportation lines actually and actively compete for the transportation of traffic from Cincinnati to Chattanooga.

A. The Cincinnati, New Orleans and Texas Pacific Railway Company and the Louisville and Nashville Railway.

6. Q. The rates from Cincinnati to Chattanooga are follows:

[Classes.—Rates in cents per hundred pounds.]

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

The distance from Cincinnati to Chattanooga is 326 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reason for any opinion you may express.

A. In my opinion, the rates from Cincinnati to Chattanooga are just and reasonable within themselves. My reason for this opinion is that said rates are relatively in line with existing rates from Cincinnati to other competitive points in that section of the country.

7. Q. Name the various transportation lines, all rail or all water, or part rail and part water, that actually and actively competed in 1892 and now compete, as well from Ohio River points as from other sections of

the country, for transportation to Atlanta, of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines from the Ohio River competed in 1892 and now compete for the transportation of freight classified under classes 1 to 6, inclusive, and A, B, etc., to Atlanta, Georgia.

From Cincinnati, Ohio:

Cincinnati, New Orleans and Texas Pacific Railway.

Louisville and Nashville Railroad.

From Louisville, Kentucky:

Louisville and Nashville Railroad.

In 1892, Louisville Southern Railroad, now known as the Southern Railway in Kentucky.

In 1892, Chesapeake, Ohio and Southwestern Railroad, now known as the Illinois Central Railroad (Louisville Division).

From Evansville, Indiana:

Louisville and Nashville Railroad.

Ohio Valley Railway.

From Owen'boro, Kentucky:

Louisville and Nashville Railroad.

In 1892, Louisville, St. Louis and Texas Railroad, now known as Louisville, Henderson and St. Louis Railroad.

From Henderson, Kentucky:

Louisville and Nashville Railroad.

Ohio Valley Railway.

From Paducah, Kentucky:

In 1892, Chesapeake, Ohio and Southwestern Railroad, now known as Illinois Central Railroad (Louisville Division).

In 1892, Paducah, Tennessee and Alabama Railroad, now known as Nashville, Chattanooga and St. Louis Railway.

From Cairo, Illinois:

Illinois Central Railroad.

Mobile and Ohio Railroad.

I am unable to enumerate all the lines from the various sections of the country other than Ohio River points that actively competed in 1892 and do now compete for traffic in the numbered and lettered classes to Atlanta, Georgia, nor can I give the names of all of the cities in the country from which freight is now forwarded and was in 1892 shipped to Atlanta. There is nothing now, nor was there in 1892, to prevent the movement of freight of all descriptions from cities located on the Mississippi and Ohio rivers, nor from cities in various States north and west of said rivers, nor from cities in the Eastern States, nor from cities in the Southern States, including the South Atlantic coast and the Gulf ports.

8. Q. State whether or not the Cincinnati, New Orleans and Texas Pacific Railway and its connections actually and actively compete for traffic from Cincinnati and from points in the Northern and Northwestern States to Atlanta, Georgia?

A. The Cincinnati, New Orleans and Texas Pacific Railway and its connections actually and actively compete for traffic from Cincinnati and from points in Northern and Northwestern States to Atlanta, Georgia. The Cincinnati, New Orleans and Texas Pacific Railway Company also

compete for traffic from Louisville and central Kentucky points to Atlanta, Georgia.

9. Q. Does said railway and its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway
251 Company and its connections have agents at the various points for the purpose of soliciting freight for their respective lines for Atlanta. The Cincinnati, New Orleans and Texas Pacific Railway Company has resident agents at Cincinnati, Ohio; Lexington, Kentucky; and Chicago, Illinois; and also employs soliciting agents whose duty it is to travel throughout the States of Pennsylvania, Ohio, Michigan, Illinois, Kentucky, and Indiana in the solicitation of freight from the various cities and towns in said States for Atlanta, Georgia.

10. Q. Does said railway and its connections advertise at said cities for the transportation of said freight to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway Company publishes tariff rates, copies of which are on file in the Cincinnati, Lexington, and Chicago offices for public inspection. Copies of said tariffs are distributed to the shippers and the railroad agents in the different towns and cities in the States of Pennsylvania, Ohio, Michigan, Indiana, Illinois, and Kentucky.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. The rate from Boston, New York, Philadelphia, and Baltimore, to Atlanta, Georgia, are made fixed differentials above the rates from said Eastern cities to Augusta, Georgia. Water competition from Eastern cities to Augusta establishes the all-rail rates from and to said points, and therefore water competition from Eastern cities to Augusta is a factor in the construction of rates from Eastern cities to Atlanta. The water-transportation rates from Eastern ports to Savannah, Georgia, plus the rates of the Georgia railroad commission, are also considered in fixing the all-rail and water rates from the said Eastern points to Atlanta.

12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. The rates on freight from Cincinnati to Atlanta are controlled to a very great extent by competition. The rates from Cincinnati and other Western points to Atlanta are to a large extent governed or controlled by the rates on the same classes of freight from Eastern shipping points, and shippers at Cincinnati, as well as other points on the Ohio River and north and west thereof, compete with the shippers in the East who manufacture or handle the same class of goods for shipment to Atlanta.

13. Q. State whether competition between carriers, whether by
252 rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. In my opinion competition between carriers, either by rail or by water, substantially affects directly and indirectly, in a number of ways, the circumstances and conditions under which the transportation of freight is conducted. For example, when two or more rail lines compete with each other for freight traffic from and to certain points, one of the

lines may inaugurate a special fast-train service for the handling of business with a view of securing the bulk of the movement. Said action would ultimately force its competitors to do likewise in order to secure some of the freight, and at an additional cost which such quick service would bring about.

14. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, as is sufficient to affect the rates charged by the direct rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no such competition at Calhoun, &c., except to the extent as competition between two or more carriers may exist at Chattanooga and to Atlanta, which points are used for constructing rates from Cincinnati and other Ohio River points to the local stations of the Western and Atlantic Railroad. Of course, any reduction which took place in the rate from Cincinnati and other Ohio River points to Chattanooga or Atlanta would bring about relative reductions in rates from said Ohio River points to Western and Atlantic stations. In other words, such local stations would have the same local benefit or the same relative reduction in rates as Atlanta and Chattanooga.

15. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think there is anything further that I can say in regard to this.

Cross-examination by Mr. SHAVER:

1. Q. I notice that in answering the direct interrogatories propounded to you, you read from a manuscript before you. How long ago did you prepare these answers?

A. The answers in this case were prepared June 22.

253 2. Q. Did you have copies of the interrogatories when you prepared this answer?

A. Yes, sir.

3. Q. In the event that merchants at Atlanta sell goods at Marietta, Cartersville, Acworth, Kingston, Adairsville, and Calhoun or any of those points and in the territory adjacent in competition with the local merchants at those points, would not a reduction in the rate from Cincinnati to those points so as to make their rates not higher than the Atlanta rates greatly benefit the local merchants at those points in that competition?

A. It might have the effect of benefitting the local merchants to some extent.

4. Q. Does not the prosperity and growth of a locality depend largely or to some extent on the prosperity of its merchants and business men?

A. Well, that depends upon circumstances. It would be reasonable to suppose, I imagine, that if the merchants were tolerably successful that it would have some influence on the community in some cases, but not in all cases.

5. Q. As a general rule, in the absence of exceptional conditions, is

not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at such point?

A. Not necessarily.

6. Q. My question was, as a general rule and in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates towards improving and increasing the business of that point?

A. Well, that again depends on circumstances. Probably in limited cases it might have some general improvement, but I venture to say that to a large number of towns a general reduction in the rates would have no material effect. The transportation rates must be of such nature as to enable the carrier to give good service to these particular points. If the rates are reduced to a basis which might be only reasonably remunerative and in some cases hardly remunerative, why, it appears to me that the carriers would not be as anxious, probably, to give as effective services, whereas if the rates were fair it would enable them to give fairly good services, and at the same time, in the building up of a community the railroad companies and the carriers themselves are a very important factor.

7. Q. You say that in the building up of a community railroads and carriers are a very important factor. Do not therefore the rates of transportation established by carriers have some effect in building up a community?

254 A. That depends, again. In a large number of cases in the South a reduction in the rates would scarcely have any effect whatever. As I said before, it does not follow that because transportation rates may be reduced that it would result in bringing about a new state of affairs to any marked degree.

8. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of these localities and discriminatory against the other benefit the one and injure the other?

A. Well, if you are speaking of localities as sections of the country, I think probably that might have some effect.

9. Q. Do not the rates of transportation affect and enter into prices of goods on which those rates are charged?

A. Yes, sir; in some cases, but in a large number of cases the transportation rates do not affect the price of the articles that are sold over the counter in the store of a retail merchant.

10. Q. In this case, where you state the rates do not affect the price of the article sold over the counter to the consumer, do they not affect the cost of the article to the merchant?

A. Yes, sir. It affects the cost of the article to the merchant, but the consumer does not get the benefit. As a rule, if any reduction is made in the transportation rates, why, the merchants get the benefit of it and not the consumer.

11. Q. Do not lower prices of goods tend to bring the goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. There may be some truth in that, but transportation rates would not have that effect, because transportation rates are made per hundred pounds, whereas the articles, as a rule, are sold by weight or by measure-

ment. Therefore a reduction of a few cents per hundred pounds would not bring about any reduction or change in the retail price of those articles.

12. Q. Does not the prosperity of a road depend more upon the prosperity of the local stations along its entire line than on that of a few widely separated trade centers or basing points?

A. A great many of the carriers have practically no local business. They have to depend on their through business. Other carriers have a fair local business, and of course a percentage of the gross earnings is due to local traffic. I believe that a great many of the carriers make special efforts to get people to emigrate. That is being done all over the South with sometimes satisfactory results, and others fail to carry their point in this respect.

255 13. Q. Would not a system of rates which would tend to build up business at the local stations along the entire line of the road, contribute more to the prosperity of a road than a system which discriminates against such localities in favor of widely separated trade centers or basings points?

A. That is a difficult question to answer. It depends entirely upon the circumstances and conditions forced. My experience is that reduced rates that have been or may be put in effect at local stations do not bring about satisfactory results; that is, it does not bring business there. People are not there and they do not go there, and it does not matter what rates you may establish, whether it is one dollar per hundred or fifty cent' per hundred. It has no effect whatever.

14. Q. That is not an answer to my question. My question was whether a system of rates which would build up business at local stations along the entire line of the road would not conduce more to the prosperity of the road than a system which builds up widely separated trade centers or basing points at the expense of the intermediate points or territories.

A. You say a system of rates which would build up. I do not know that any system of rates could be put in effect which would build up business of the local points as against the trade centers that you mention. I will say in explanation of that, that so far as the Cincinnati, New Orleans and Texas Pacific Railway Company is concerned, it does not charge higher rates to intermediate points in Tennessee than at Chattanooga, Tennessee. But it has not had the effect of increasing the local business of these points, and that has not been a question of one year or two years. I have not seen any remarkable—in fact, I have not seen any—increase in business, and so far as my knowledge goes I do not believe that the reduction to the local stations, which may be practically the same as to these trade centers, which would bring about what you may term a general marked improvement at these local stations. People flock to these trade centres all the time. They do not care to get off in the country.

15. Q. You said that the Cincinnati, New Orleans and Texas Pacific Railway Company makes no greater charge for the shorter than the longer haul at any point on its lines between Cincinnati and Chattanooga. Does that road meet competition at Chattanooga?

A. Yes, sir; in transportation from Cincinnati.

16. Q. Does it not come in competition with the Louisville and Nashville Railroad and the Nashville, Chattanooga and St. Louis Railway in transportation between Cincinnati and Chattanooga?

A. Yes, sir.

256 17. Q. You stated in your direct examination that the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable in and of themselves. Is it also your opinion that the lower rates for the longer hauls through those points to Atlanta are just and reasonable in and of themselves?

A. I think so.

18. Q. Would higher rates be charged to Atlanta but for competition?

A. Undoubtedly.

19. Q. Do those rates to Atlanta yield the carrier any revenue in excess of the cost of the service of transportation?

A. I think so.

20. Q. Is a rate, in your opinion, reasonable in and of itself which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. I should say not.

21. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. That is a very hard matter to determine. It is a very difficult matter to decide or to fix your rate as compared with the cost of service of operation. There are so many conditions surrounding this rate situation in regard to that, that it is a very difficult thing to form.

22. Q. Can it be ascertained whether a rate yield to the carrier an income over and above the cost of the service of carriage without first ascertaining the cost of that service?

A. I think myself that that depends somewhat upon experience. If a new railroad is opened up, it has to fix its rates, we will say, to local points, to enable that carrier to meet the cost of operation. Now, the cost of operation has not been fixed, so therefore the rates will have to be fixed by the management as they will feel will bring about the desired result—I mean from a revenue standpoint—and which will meet all the expenses. On the other hand, again, these rates may not be high enough to meet these expenses.

23. Q. Does not the cost of the expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. If you mean by that question, if freight can be handled for a longer distance for a less rate per ton per mile——

24. Q. I did not refer to the rate per ton per mile.

A. You referred to the distance, I understand?

257 25. Q. I will read the question again. (Counsel here reads the question.)

A. I would like for you to explain that to me—what you mean by that.

26. Q. Well, all other things being equal, and the rate of speed being the same, the length of the train being the same, the quantity of the cars being the same, &c., would it not cost more to transport the train twenty miles than ten?

A. It would probably cost more in the aggregate.

27. Q. That is what I mean, in the aggregate; I do not refer to cost per mile.

A. It will cost more to run a train of twenty cars three hundred miles than a train of twenty cars fifty miles.

28. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Of course it takes longer for a train to go a hundred miles at the rate of fifty miles per hour than it does to go fifty miles.

29. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

30. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, &c., greater the greater the length of the haul?

A. Yes, sir.

31. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the haul?

A. Yes, sir.

32. Q. Does it not require more locomotives and cars and crews for running trains on a long road than on a shorter road?

A. Do you mean in the aggregate or do you mean as compared with the distance? If you mean in the aggregate, I suppose it will cost more for the longer road than for the shorter road.

33. Q. I asked, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. Yes, sir.

34. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

258 35. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on a long through haul?

A. I should say so.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio Rivers?

A. Since 1884.

36½. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition, to the longer distance point?

A. I do not know that I do.

37. Q. How are the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made? Are they not combinations of the through rates to Chattanooga or Atlanta plus the local rates on to or back to those intermediate points, as the case may be?

A. Yes, sir.

38. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

39. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. They are what are termed local rates of the Western and Atlantic Railroad, if that is what you mean.

40. Q. Are not the rates by all the lines from Cincinnati to Atlanta the same?

A. Yes, sir.

41. Q. Were not the rates in force in 1892 from Cincinnati to Atlanta established by the Southern Railway and Steamship Association?

A. I do not know that I can answer that except to say that from Cincinnati to Atlanta, with probably a few exceptions, the rates have been in effect for a number of years past, and were no doubt established by the association you speak of in line with the rates from other points.

42. Q. Does the Georgia railroad commission establish through rates on interstate commerce or any proportion of such through rates?

A. My understanding is that their jurisdiction is within the State of Georgia.

259 43. Q. In your direct examination you named a number of lines which might be formed and which you stated competed for business from Cincinnati to Atlanta. Can not all those lines be also formed to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combinations with the Western and Atlantic Railroad as the terminal carrier?

A. Yes, sir.

44. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati and under through rates?

A. Yes, sir.

45. Q. Does not the Cincinnati, New Orleans and Texas Pacific Railway compete with other lines for busines' from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. Yes, sir.

46. Q. Do not the agents of the Cincinnati, New Orleans and Texas Pacific Railway Company solicit business from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. Yes, sir.

47. Q. Does not that road publish its through rates to those points as well as to Atlanta?

A. It does.

48. Q. What other road is Cartersville located on besides the Western Atlantic?

A. The East and West Railroad.

49. Q. What roads does that road cross or connect with between Cartersville and Pell City or at Pell City?

A. The road connects with the Southern Railway at Rockmart; with the Chattanooga, Rome and Columbus at Cedartown; the Alabama Mineral Division of the Louisville and Nashville Railroad at Dukes; with the Southern Railway and the Birmingham and Atlantic Railroad at Pell City.

50. Q. Can not lines be formed, by the consent of the carriers, from Cincinnati to Cartersville by combination of some of those roads which connect with or cross the East and West Road?

A. Yes, sir.

51. Q. On what other roads besides the Western and Atlantic Railroad is Kingston located?

A. Kingston, Georgia, seems to be located only on the Western Atlantic Railroad according to this guide.

52. Q. Is it located on the Rome Road?

260 A. I think the We'tesrn and Atlantic controls what is known as the Rome Railroad.

53. Q. But physically it is a distinct road from Rome to Kingston?

A. It is a branch road that runs off from Rome to Kingston and some years ago was operated independently, but I believe it is now operated by the Western and Atlantic Railroad, but under what terms I cannot say.

54. Q. Does it not connect with or meet other lines of railway at Rome and other points?

A. Yes, sir; it connects with other roads entering Rome, Georgia.

55. Q. Will you name them?

A. The Western and Atlantic; the Chattanooga, Rome and Columbus; and the Southern Railway.

56. Q. By consent of the carriers, can not lines be formed from Cincinnati by those roads, or some of them, to Rome and thence to Kingston?

A. I suppose that route could be formed, could be used, but I can not say whether it is or not. The Cincinnati, New Orleans and Texas Pacific does not use it, however.

57. Q. I did not ask you whether they did use it, but whether the lines could not be formed with the consent of the carriers.

A. They could without any doubt, by consent of all the carriers interested.

Redirect examination by Mr. BAXTER:

1. Q. What is the distance from Cincinnati to Chattanooga via the Cincinnati, New Orleans and Texas Pacific Railway Company?

A. 336 miles.

2. Q. How are rates made from Cincinnati to local stations on the Cincinnati, New Orleans and Texas Pacific Railway between Cincinnati and Chattanooga; do they increase with the distance?

A. Yes, sir; according to the distance.

3. Q. At what distance from Cincinnati on the Cincinnati, New Orleans and Texas Pacific Railway Company do the rates which are proportioned to distance become as high from Cincinnati as are rates from Cincinnati to Chattanooga?

A. Well, probably on some classes we may meet the Chattanooga rates at the distance of 125 miles south of Cincinnati. On other classes it may be 140 miles.

261 4. Q. At those local stations on the Cincinnati, New Orleans and Texas Pacific Railway, between Cincinnati and Chattanooga, at which rates are so high as the rates from Cincinnati to Chattanooga, do the merchants at said local stations purchase their goods at Cincinnati or Chattanooga, or do they purchase them in the Eastern markets?

A. The purchases are made at various points. I do not think the merchants at the local stations on the Cincinnati, New Orleans and Texas Pacific Railway buy their goods in the Eastern markets. They

get them from Chattanooga, or from Knoxville, or from Cincinnati, or from Louisville. They do not go so far for markets for their goods.

5. Q. What is the reason that they do not, if you know?

A. Well, I do not know exactly, except they have been in the habit of purchasing their goods from these various nearby trade centers, and probably do not care to make any change.

6. Q. They have established their credit and commercial relations with the cities located near them?

A. Yes, sir. They exchange their freight, you know; they buy from the man in Chattanooga, and they sell him something in return.

Recross-examination by Mr. SHAVER:

1. Q. Do you know of your own personal knowledge that the merchants at these points intermediate between Cincinnati and Chattanooga, which have the same rates as Chattanooga, do not buy their supplies of goods at Cincinnati and Ohio River points or in the East—in New York or other Eastern cities?

A. Well, I have not in view all merchants of the various towns along the line of the road, but I think I am correct in stating that they buy chiefly from Cincinnati, Chattanooga, and Louisville.

2. Q. Chiefly?

A. Yes, sir; of course they buy certain things at points, say, in Ohio, Indiana, and off the Ohio River, like agricultural implements, and something of that sort, but I think their boots and shoes and provisions generally are bought at these other points that I have mentioned.

3. Q. Has the Cincinnati, New Orleans and Texas Pacific Railway Company suffered any great loss *on* material loss from charging rates to those intermediate points not higher than the rates to Chattanooga?

A. Well, we have suffered loss to the extent of the difference between the rates that are now in effect and higher rates which were in effect some years ago.

262 4. Q. How long since the Cincinnati, New Orleans & Texas Pacific Railway Company ceased charging higher rates to those intermediate points than to Chattanooga?

A. It was several years ago, but I can not tell you just exactly when it was.

Redirect examination by Mr. BAXTER:

1. Q. Is not the Cincinnati, New Orleans & Texas Pacific Railway Company in the hands of a receiver?

A. Yes, sir.

I, Frank Lyon, who was agreed upon by counsel for both parties to act as special examiner, as set forth in their foregoing stipulation, do hereby certify that I faithfully and truly and correctly took the testimony of the above-named witnesses in shorthand, and afterwards reduced it to typewriting, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This 18th day of August, 1897.

FRANK LYON,

Acting Special Examiner, 1317 F Street NW., Washington, D. C.

EXHIBIT No. 1.—Filed by J. M. Culp, p. 61.

[Proof copy.]

The Southeastern Freight Association.

ARTICLES OF ASSOCIATION OF THE SOUTHEASTERN FREIGHT ASSOCIATION.

PREAMBLE.

For the purpose of interchanging authentic information in regard to the tariffs of the respective parties, members of this association; for consultation and mutual advice in regard to the reasonableness of tariffs, and the publicity of the same, and to aid in fulfilling the purposes of the laws of the States, and of the United States, affecting commerce; especially with the view of preventing illegal and unjust discriminations between persons and localities, or kinds of traffic.

263 The Atlanta & West Point Railroad and Western Railway of Alabama, the Central of Georgia Railway, the Georgia Southern & Florida Railway, the Southern Railway, the Merchants & Miners Transportation Company, the Ocean Steamship Company, the Atlantic Coast Line, the Old Dominion Steamship Company, the Atlanta, Knoxville & Northern Railway, the Florida Central & Peninsular Railroad, the Baltimore, Chesapeake & Richmond Steamboat Company, the Plant System, the Georgia Railroad, the East & West Railroad, the Norfolk & Western Railway, and such other lines as may become parties hereto, hereby agree to form an association to be called the Southeastern Freight Association.

ARTICLE I.

SECTION 1. The territory of this association shall be the territory lying south of the Potomac River to the Virginia, West Virginia State line, thence via said line to Bristol, Tenn., through and including Middlesborough, Ky., Jellico and Harriman Junction, Tenn., to and including Chattanooga, Tenn., and on and south and east of a line from Chattanooga, Tenn., via the Alabama Great Southern Railroad to Birmingham, Ala., thence via Southern Railway to and including Selma, Ala., thence via the Western Railway of Alabama to and including Montgomery, Ala., thence via Plant System through Valdosta, Ga., Jasper, Live Oak, and Lake City, Fla., to Jacksonville, Fla., including points on the line from Montgomery to Jacksonville; thence via the South Atlantic Seaboard to the Potomac River.

SECTION 2. The traffic subject to this association shall be all business for which two or more parties hereto compete, having origin or destination within this territory.

SECTION 3. It is understood that the following traffic is not covered by this association: (1) Traffic between any two points north of the Virginia-North Carolina State line; (3) traffic between points on the designated northern and western boundary lines and points outside of

the defined association territory; (3) local traffic from or through North Atlantic ports to South Atlantic ports, or from South Atlantic ports to or through North Atlantic ports; and (4) coke and bituminous coal.

ARTICLE II.

264 SECTION 1. The association shall be managed by an executive board, which shall have no power to bind the members of the association to observe any regulations in restraint of trade.

ARTICLE III.

SECTION 1. The presidents, vice-presidents, or general managers of the companies members of the association shall constitute the executive board, but may designate another officer, fully empowered to represent them thereon.

SECTION 2. The executive board shall elect its chairman and the chairman of this association, and shall fix his term of service and shall fix the salaries of the chairman and officers. All other expenses of the association shall be subject to its review and approval.

SECTION 3. The executive board or the conference committee shall meet upon the written request of three or more members thereof, or upon call of the chairman.

SECTION 4. Two-thirds of the members of the executive board shall constitute a quorum.

SECTION 5. It shall require the unanimous action of those present to adopt any proposition coming before the executive board.

ARTICLE IV.

SECTION 1. A conference committee shall be constituted, consisting of a duly accredited traffic officer of each company. Each company party hereto reserving always to itself the right to take independent action on any subject, agrees that any change in rates, rules, or regulations affecting the traffic within the territory of this association, proposed to be made by any company, shall be submitted to said conference committee by the company proposing to make such change, for consideration and exchange of views, at least three days before the same shall take effect.

ARTICLE V.

SECTION 1. It shall be the duty of the chairman to discourage a reduction in rates by rebate or drawback or by payment of commissions or by underbilling weights, or by illegal device whatsoever, and upon complaint that such practices are being resorted to, shall make an investigation thereof, reporting the result to the executive board. The chairman and his representatives shall be given access to all records of the companies that pertain to the traffic subject to this association.

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ARTICLE VI.

SECTION 1. The association expenses shall be apportioned fairly between the companies by the executive board, and upon such basis the chairman shall have authority to make draft upon such companies monthly, in advance, to meet the expenses of the association.

ARTICLE VII.

SECTION 1. Any party retiring from this association before the expiration of the time herein fixed, except by unanimous consent, shall not be released from its obligations to contribute its pro rata share towards the expense of maintaining the association during the time agreed upon.

ARTICLE VIII.

SECTION 1. It shall be the duty of the chairman to preside at all meetings of the conference committee, keep the records of the association, including the records of the executive board, to receive from members of the association copies of any joint tariff or rate established by said members covering traffic within the territory of the association, either wholly or in part, and to compile, print, and distribute such tariffs in conformity with the interstate-commerce act and other laws; and to receive, formulate, and distribute statistical information as to the freight traffic of all lines. To this end, members will furnish such reports of freight traffic within the territory of the association as may be required by the chairman.

SECTION 2. The rules governing the filing of freight tariffs with the Interstate Commerce Commission shall apply as to filing all tariffs with the chairman, and the parties hereto shall file with the chairman all tariffs they may issue.

ARTICLE IX.

SECTION 1. Nothing herein shall be so construed as to establish or otherwise affect rates on freight traffic, and it shall be the duty of the executive board to so exercise the power conferred upon it as to discourage and, so far as possible, prevent a violation of the interstate-commerce act, and of any other Federal or State law applicable to commerce, or to the provisions of the charters of any of the parties hereto. The executive board shall report to the Federal and State commissions any
266 reduction in rates by any illegal device whatsoever, in order to prevent unjust discriminations between persons and localities, or kinds of traffic.

ARTICLE X.

SECTION 1. No change shall be made in these articles of association except by consent of each member of the executive board.

ARTICLE XI.

SECTION 1. These articles of association shall become effective May 1st, 1897, and continue in force until May 1st, 1898.

THE CENTRAL OF GEORGIA RAILWAY,
By JOHN M. EGAN, *Vice-President.*
THE OCEAN STEAMSHIP CO.,
By JOHN M. EGAN, *Vice-President.*
MERCHANTS AND MINERS TRANS. CO.,
By J. C. WHITNEY, *Traff. Mgr.*
ATLANTA, KNOXVILLE & NORTHERN RY. CO.,
By E. C. SPALDING, *Vice-President.*
SOUTHERN RWY. CO.,
By W. W. FINLEY, *2nd V. P.*
GEORGIA SOUTHERN & FLORIDA RY. CO.,
By WILLIAM CHECKLEY SHAW, *Vice-President.*
EAST & WEST RAILROAD CO.,
By CHARLES P. BALL, *Genl. Manager.*
THE BALTIMORE, CHESAPEAKE AND RICHMOND ST. BT. CO.,
By REUBEN FOSTER, *President.*
PLANT SYSTEM,
By D. F. JACK, *3rd V. P.*
THE GEORGIA RAILROAD CO.,
By THOMAS K. SCOTT, *Gen. Mgr.*
THE ATLANTIC COAST LINE,
By H. WALTERS, *President.*
THE ATLANTA & WEST POINT RAILROAD CO. AND THE WESTERN RAILWAY OF ALABAMA,
By GEORGE C. SMITH, *Pres. and Genl. Mgr.*

EXHIBIT No. 3.—Filed by J. R. Thompson, p. 63.

THE SOUTHERN STATES FREIGHT ASSOCIATION.

Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.

Route—from and via—	Line.	Packing-house products.	Corn.	Wheat.	Oats.	Other grain, hay, and malt.	Milled products of grain.	Agricultural implements, vehicles, machinery, and furniture.	Stoves and hollow ware, special iron articles, except R. R. and bridge iron.	R. R. track material, C. L.; bridge iron, C. L.; stone, C. L.; brick, C. L.; cement, C. L.; salt, C. L.; fertilizer, C. L.	Miscellaneous merchandise.	Total.
Cincinnati, Ohio	L. & N. R. R	939,800	1,028,700	.....	935,200	3,985,300	1,519,300	1,422,100	3,241,600	1,471,900	8,206,000	22,749,900
Louisville, Ky	L. & N. R. R	6,511,600	414,700	.....	1,116,600	108,000	1,349,800	657,100	525,300	9,742,400	8,208,700	28,634,200
Lexington, Ky	L. & N. R. R	.....	.....	.....	.....	.....	36,700	.....	252,500	25,700	3,061,200	3,376,100
Owensboro, Ky	L. & N. R. R	.....	.....	.....	.....	.....	153,700	188,100	900	.....	4,100	346,800
Evansville, Ind	L. & N. R. R	9,951,900	1,050,300	198,100	1,279,500	3,082,800	20,482,700	422,900	67,000	2,546,700	8,544,700	47,626,600
Memphis, Tenn	L. & N. R. R	125,000	.....	.....	1,020,400	106,203	151,400	800	.....	100,000	108,200	1,612,000
New Orleans, La	L. & N. R. R	1,300	.....	.....	3,742,800	.....	87,000	9,200	9,800	715,800	11,839,000	16,404,900
Sheffield, Ala	L. & N. R. R	.....	.....	.....	.....	.....	.....	1,200	.....	.....	2,200	3,400
Total	L. & N. R. R	17,529,600	2,493,700	198,100	8,094,500	7,282,300	23,780,600	2,701,400	4,097,100	14,602,500	39,974,100	120,753,900
Cincinnati, Ohio	C. S. Ry	1,105,600	380,400	.....	551,900	3,567,900	684,400	937,700	2,116,700	677,400	9,571,700	19,603,700
Lexington, Ky	C. S. Ry	.....	.....	.....	.....	.....	149,900	.....	404,500	331,000	2,631,200	3,516,600
Total	C. S. Ry	1,105,600	380,400	.....	551,900	3,567,900	834,300	937,700	2,521,200	1,008,400	12,202,900	23,120,300
Louisville, Ky	L. S. R. R	1,241,600	1,217,200	.....	4,512,200	266,100	434,200	647,600	233,600	1,142,200	2,891,500	12,586,200
Paducah, Ky	N. N. & M. V. Co	.....	.....	.....	.....	21,000	.....	500	.....	.....	167,800	189,300
Evansville, Ind	O. V. Ry	25,700	168,000	.....	32,000	966,400	457,900	47,500	.....	.....	96,200	1,793,700
Paducah, Ky	P. T. & A. R. R	604,200	271,300	.....	.....	951,600	522,200	3,500	120,700	268,400	236,200	2,977,500
Cairo, Ill	I. C. R. R	193,500	2,000	.....	60,600	1,989,900	314,700	.....	129,400	300,100	100,600	3,090,800
Memphis, Tenn	I. C. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,000	3,000
New Orleans, La	I. C. R. R	.....	.....	.....	486,900	.....	24,000	.....	.....	.....	1,257,000	1,967,900
Total	I. C. R. R	193,500	2,000	.....	547,500	1,989,900	338,700	.....	129,400	300,100	1,360,600	5,061,700
Cairo, Ill	M. & O. R. R	858,300	98,300	.....	36,900	1,258,500	2,669,900	19,100	600	362,900	869,200	6,173,700
Cairo, Ill	N. C. & St. L. Ry	1,253,100	280,100	.....	60,100	6,472,000	1,194,100	111,400	536,000	503,600	1,268,500	11,488,900

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EXHIBIT No. 3.—Filed by J. R. Thompson, p. 63.—THE SOUTHERN STATES FREIGHT ASSOCIATION—Continued.

Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.—Continued.

Route—from and via—	Line.	Packing-house products.	Corn.	Wheat.	Oats.	Other grain, hay, and malt.	Milled products of grain.	Agricultural implements, vehicles, machinery, and furniture.	Stoves and hollow ware, special iron articles, except R. R. and bridge iron.	R. R. track material, C. L.; bridge iron, C. L.; stone, C. L.; brick, C. L.; cement, C. L.; salt, C. L.; fertilizer, C. L.	Miscellaneous merchandise.	Total.
Columbus, Ky	N. C. & St. L. Ry	5,228,100	1,215,400	44,500	.....	43,800	5,314,100	33,900	24,300	453,400	2,623,900	14,981,400
Hickman, Ky	N. C. & St. L. Ry	.....	434,700	.....	.....	.....	.....	.....	.....	.....	.....	434,700
Johnsonville, Tenn	N. C. & St. L. Ry	.....	114,900	.....	.....	.....	471,400	.....	.....	.....	.....	586,300
Nashville, Tenn	N. C. & St. L. Ry	1,200	99,800	600	800	38,700	10,112,000	9,600	109,500	342,400	2,541,000	13,255,600
Total	N. C. & St. L. Ry	6,482,400	2,154,900	45,100	60,900	6,554,500	17,091,600	154,900	669,800	1,020,400	6,433,400	40,746,900
Memphis, Tenn	M. & C. R. R	1,672,100	355,000	59,700	4,321,000	735,400	4,720,100	36,600	13,800	1,520,200	1,400,800	14,834,700
Sheffield, Ala	M. & C. R. R	100	26,500	.....	.....	.....	607,600	10,500	.....	.....	34,900	679,600
Total	M. & C. R. R	1,672,200	381,500	59,700	4,321,000	735,400	5,327,700	47,100	13,800	1,520,200	1,435,700	15,514,300
Memphis, Tenn	K. C., M. & B. R. R	1,233,600	274,200	167,500	1,132,400	956,600	3,815,900	9,900	183,100	2,063,500	1,223,000	11,059,700
Huntington, Miss	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	407,100	407,100
Vicksburg, Miss	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	300	300
New Orleans, La	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	150,000	32,200	182,200
Total	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	150,000	439,600	589,600
Huntington, Miss	G. P. Ry	.....	.....	.....	.....	.....	24,300	.....	22,300	100,000	2,569,800	2,716,400
Vicksburg, Miss	A. & V. Ry	.....	.....	.....	.....	.....	196,600	1,200	.....	.....	98,600	296,400
New Orleans, La	N. O. & N. E. R. R	.....	.....	.....	437,800	.....	.....	.....	.....	594,000	3,853,000	4,884,800
Sheffield, Ala	B. S. & T. R. Ry	.....	.....	.....	.....	.....	.....	1,400	.....	.....	.....	1,400
Alexandria, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	23,000	6,700	.....	8,600	38,300
Strasburg, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	.....	2,900	.....	7,700	10,600
Lynchburg, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	2,200	626,000	.....	8,900	637,100
Richmond, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	.....	62,200	.....	3,700	65,900
Total	R. & D. R. R	.....	.....	.....	.....	.....	.....	25,200	697,800	.....	28,900	751,900
Grand total	.....	30,946,700	7,451,500	470,400	19,727,100	24,549,600	55,493,900	4,597,000	8,689,400	23,211,600	74,080,500	249,217,700

268 EXHIBIT No. 2.—Filed by J. R. Thompson, p. 6.

THE SOUTHERN STATES FREIGHT ASSOCIATION.

Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893.

Route or line, via—	Weight.
Savannah and Central R. R	22,648,821
Savannah and S. F. & W. Ry	1,284,114
Charleston and South Carolina Ry	12,971,428
Portsmouth and Atlantic Coast Line	584,024
Richmond and Atlantic Coast Line, all rail	273,988
Portsmouth and Seaboard Air Line	8,099,031
West Point and Richmond & Piedmont Air Line	11,374,523
Alexandria and Piedmont Air Line	7,162,939
Strasburg and Piedmont Air Line	495,129
Lynchburg and Piedmont Air Line	1,682
Norfolk and Va. Tenn. & Ga. Air Line	3,609,264
Hagerstown and N. & W. R. R	8,757,437
Brunswick and E. T. V. & Ga. Ry	6,448,565
	83,710,945

269 EXHIBIT No. 4.—Filed by J. R. Thompson, p. 67.

Circular Letter No. 13.—Series 1895–96.

The Southern States Freight Association.

AGREEMENT.

This agreement, made this 18th day of October, 1895, by the parties whose signatures are hereby attached, witnesseth that

Whereas, The establishment, publication, and maintenance of tariffs of uniform rates, to prevent unjust discrimination such as neces'arily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, is important for the protection of the public; and

Whereas, It is deemed to be the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing carriers and markets without unjust discriminations in favor of or against any city or section; and

Whereas, These objects can be attained by the cooperation on the part of the various independent transportation lines engaged in the traffic of the territory lying south of the Potomac and Ohio rivers and east of the Mississippi River; and

Whereas, Such cooperation is absolutely necessary to a strict compliance with the requirements of the act of Congress entitled "An act to regulate commerce,"

Now, therefore, In order to secure such cooperation among the said transportation lines and to provide means for the prompt adjustment of the differences which may arise between them by separately agreeing to place all traffic common to two or more companies under well-
270 defined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

ARTICLE FIRST.

Title of association.

SECTION 1. The association herein formed shall be styled the Southern States Freight Association.

ARTICLE SECOND.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting and shall hold their offices until the next annual meeting, and thereafter until their successors are elected: President, vice-president, commissioner, three arbitrators. A secretary shall be appointed by the commissioner; a secretary to the board of arbitration shall be appointed by that body; both appointments subject to confirmation by the executive board at its first meeting thereafter.

Filling vacancies in elective offices.

SECTION 2. In the event of a vacancy occurring in any elective office the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president to be held within twenty days after the vacancy occurs.

ARTICLE THIRD.

Territorial limit for lines which may be included.

SECTION 1. The territory of the association shall be that territory lying south and west of the Virginias, south of the Ohio and east of the Mississippi rivers. The traffic subject to this agreement shall be all business for which two or more of the parties hereto compete, having origin or destination within this territory. It is understood that the following

Traffic not covered by this agreement.

traffic is not covered by this agreement: (1) Traffic carried between points on the Ohio and Mississippi rivers, (2) traffic between points on the designated northern and western boundary lines and points outside of the defined association territory, and (3) coke and bituminous coal.

271 It is further understood and agreed that traffic to or from a local point on any line shall be considered local to that line throughout its transportation by such line, and so far as that line may be concerned, shall not be subject to this agreement; provided, that rates to or from such local point shall not be made so as to cut the rates fixed under the rules of the association to or from the nearest competing point through which such local traffic may pass; and no line shall make any shrinkage or reduction in the tariff rates, by absorbing expense bills or otherwise, from competing points on such line, the effect of which will be to divert at any junction

Description of the local traffic that is exempted from operations of the agreement.

Protection of local business by prohibiting reductions of rates on same at junction points.

point such local traffic from the line on which it originates; provided, however, that this shall not interfere with milling in transit as may be provided for by the rules of the association.

Respecting routing of bills of lading and initial lines.

It is also further understood and agreed that traffic moving from and to competitive points under bills of lading carrying routing instructions from shippers shall be forwarded by initial lines and waybilled by them with similar routing on original waybills, which routing shall be absolutely observed by all roads parties to the through route, and said routing shall be shown on rebilling by any or all intermediate carriers where rebilling is necessary.

Eastern and Western lines respectively defined.

SECTION 2. For the purposes of this agreement Western lines, as hereinafter referred to, shall be lines parties to this agreement, leading from Cincinnati and from Ohio and Mississippi river crossings west and south thereof to association territory, and Eastern lines, as hereinafter referred to, shall be lines parties to the agreement leading from gateways east of Cincinnati.

Restriction of Western lines making joint rates.

SECTION 3. Western lines shall not make joint rates on traffic passing between points east of a line drawn from Toronto, on the north shore of Lake Ontario, through Lewiston, Niagara Falls, Buffalo, Erie, Oil City, thence via line of the Allegheny Valley Railroad to Pittsburg, thence down the Ohio River, through Wheeling and Parkersburg to Huntington, W. Va., and Ironton, O., or common
272 points adjacent thereto, as hereinafter defined, and points east of a line drawn from Chattanooga, through Birmingham, Selma, and Montgomery, to Pensacola, Fla.

Restriction of Eastern lines in making joint rates.

SECTION 4. Eastern lines shall not make joint rates on traffic between points west of the line described in the preceding section, viz: from Toronto, on the north shore of Lake Ontario, to Ironton, O., or points adjacent thereto as hereinafter defined, and points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon to Live Oak, Fla.; provided, however, that the Norfolk and Western Railroad may participate in traffic via Kenova at the rates established by the association between points in the territory on and east of its line from Columbus, O., to Kenova, and on and south of the line of the Pittsburg, Cincinnati, Chicago and St. Louis Railway, Columbus, O., to Steubenville, O., and points on and east of the Chattanooga-Pensacola line on and east of the Chat-

Western business in which the Norfolk & Western R. R. may participate.

Permission to Eastern and Western lines as to making common-points rates.

SECTION 5. It is understood that the Eastern and Western lines shall be entitled to compete for traffic passing between points on the Toronto-Pittsburg-Ironton line as before designated, or points common thereto, and all association territory.

A common point is understood to be a point adjacent to the designated line, the rates from which are the same as from points immediately on such line to Eastern cities and

gateways, and also the same as from points on such designated line to Cincinnati and to Louisville.

Methods of mutual protection to Eastern and Western lines.

SECTION 6. For the mutual protection of the various interests the companies parties to this agreement severally agree to carry out the provisions as to Eastern and Western territories, so far as can be legally done by them, respectively, not only by refusing to unite in joint rates as above provided, but, where necessary, by exacting local rates in event of traffic being offered to any member in violation of the provisions of this article.

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ARTICLE FOURTH.

Time and place of holding conventions.

SECTION 1. The representatives of the several companies members of this association shall meet in convention annually on the second Wednesday in June, in the city of New York, or at such other time and place as may be agreed upon by a majority of the members, and special meetings may be called at any time as hereinafter provided.

ARTICLE FIFTH.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such other matters as can not be properly determined by the executive board or by arbitration.

Unanimous vote required in the election of officers.

Each company a member of the association shall have one vote. The officers of the association shall be elected by unanimous vote, and may be removed by a two-thirds vote of the members.

Representation of members at conventions.

Companies members of the association may be represented in the convention by the president, receiver, vice-president, general manager, traffic manager, superintendent or general freight agent, in person or by proxy, provided such proxy presents to the secretary proper authority for such representation.

In case of more than one nomination being made for any office the election shall be by ballot.

ARTICLE SIXTH.

Companies or lines members of the association entitled to representation on the executive board.

SECTION 1. Such lines or companies as may execute this agreement shall each designate a representative who shall represent them in all matters of business with the other members of the association. The several representatives so designated shall constitute the executive board, of which the commissioner shall be chairman. If any company or

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line which is entitled to a representative fails to appoint one, or if their representative be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

ARTICLE SEVENTH.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner, whenever and wherever in his judgment it is necessary, or when any three members of the board requests it, but all such calls must state the object of the meeting and the subjects to be acted on by the board.

Commissioner shall represent absent members.

All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes cast by the commissioner for absent members, at any time, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted on in the meeting of the executive board, but the assent of absent members must be obtained, or a decision by arbitration, before such action becomes binding upon them.

Jurisdiction of executive board.

The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement, but shall act only by unanimous consent of all its members. In the event of a failure to agree, the question at issue shall be settled by arbitration as hereinafter provided for.

Recognition of the principle of a physical apportionment of business.

SECTION 2. The principal of a physical apportionment of actual traffic, subject to arbitration, shall be recognized in the operations of the association, so far as this can be lawfully done.

Physical apportionment of the cotton business.

In pursuance of this principle, when any member or members of the association interested as an initial line or lines from any competing point in association territory shall desire a physical apportionment of the cotton traffic from such point, such apportionment shall be made, and, in case an
275 agreement can not be reached between the initial lines as to the allotment to each, such allotment shall be made by arbitration.

When, in such apportionment between initial lines, the facilities afforded to any such line by its connections extending to the ports are presented by it for consideration in fixing its allotment the arbitrators shall also consider and determine what proportion of the traffic allotted to such initial line shall be accorded to its connections.

Executive board authorized to make rules and regulations for the apportionment of other actual traffic.

The executive board shall have power from time to time to make rules and regulations and prescribe methods, not inconsistent with this agreement, for the physical apportionment of actual traffic.

ARTICLE EIGHTH.

Executive board may appoint rate committees and other committees.

SECTION 1. The executive board shall appoint a rate committee or rate committees, and at its discretion other committees, either from among its own number, or from

among the officers and agents of the companies members of the association, and may delegate to such committees jurisdiction over matters especially committed to their charge, provided such matters be within the jurisdiction of said board as herein defined.

Authority of rate committee.

SECTION 2. Questions of rates and classifications affecting the traffic covered by this agreement shall be first presented for consideration by the rate committee or committees, and in establishing rates and classifications on all traffic covered by this agreement the rate committee or committees shall keep in view a proper relative adjustment of all rates, and especially on similar articles from the east and the west to common territory. If the rate committee or committees shall omit to make rates on any traffic covered by this agreement, the commissioner shall, as the representative of each member of the association severally appointed for that purpose, have authority to make rates thereon. Such

Commissioner authorized to make rates.

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rates made by the commissioner shall be presented for action of the rate committee or committees at its or their next meeting, but shall remain in effect until changed by the said committee or committees, the executive board, or by arbitration, it being the intention that there shall be properly authenticated tariffs of rates on all traffic subject to this agreement.

Rate committees shall act only by unanimous consent.

SECTION 3. Rate committees shall only act by unanimous consent, and failing to agree, the question at issue shall, upon demand of any member, be referred to the executive board for action at its next meeting, or the votes of members of the executive board may be taken separately and apart by correspondence, and such questions may be submitted direct to arbitration when authorized by a majority of the executive board.

Commissioner shall be ex officio chairman of all rate committees and shall represent absent members.

SECTION 4. The commissioner shall be ex-officio chairman of all rate committees and shall be the medium of communication between such committees and the executive board. Absent members of rate committees shall be represented by the commissioner, as in the case of absent members of executive board. During the interim between the reference of any matter of difference from a rate committee to the executive board, and the final determination of such matter, the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily as the representative of each member of the association severally appointed for that purpose, and his decision shall be binding on all parties until changed by the executive board or by arbitration.

Commissioner shall have authority to decide temporarily questions on which rate committees fail to agree.

ARTICLE NINTH.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board, within the jurisdiction of said board as herein defined, shall have authority to make, from time to time, such rules and regulations not inconsist-

ent with this agreement, as may be necessary to secure system in the affairs of the association, and attain the objects for which it is formed.

ARTICLE TENTH.

Duties of the president.

277 SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such meetings, and communicate the proceedings to all the members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is in his judgment necessary.

Duties of the vice president.

SECTION 2. The vice-president, in the absence of the president, shall be empowered to perform all the duties of the president, and in the absence of the vice-president a chairman may be selected from the members of the association.

ARTICLE ELEVENTH.

Method of settling differences by arbitration.

SECTION 1. In case any disagreement shall arise in connection with the business under the jurisdiction of this association, except as provided in article eighth, such disagreement shall first be brought to the attention of the commissioner, by written notice, who shall name a date, which shall be within fifteen days from the serving of such notice, when he will be prepared to consider the matter, and at such time written arguments shall be submitted, and the commissioner's decision shall be rendered within five days thereafter, and this decision shall be effective until changed by arbitration. Should this decision be unsatisfactory to any party involved, arbitration by the board of arbitration of the association shall, upon request, follow, unless a party in interest shall notify the commissioner, in writing, within five days from the rendition of his decision, of its desire to have an arbitration outside the board of arbitration of the association, in which event the commissioner shall notify the other party, and the matter of disagreement shall be arbitrated in the following manner and under the following rules:

Within fifteen days from the rendering of the commissioner's decision, the party or parties aggrieved shall appoint one arbitrator; the party or parties defendant shall appoint a second arbitrator, and these two shall jointly and by
278 agreement appoint the 3rd arbitrator, and the decision of the majority of these arbitrators shall be final. Such arbitrators may be selected from lines members of this association, provided the parties contesting can so agree, in which case only the actual expenses attending such arbitration shall be paid by the association. Failing to agree upon arbitrators members of the lines parties hereto, they may go outside for such arbitrators, and the expenses of such arbitra-

tion shall be met by the association, both in compensation direct to the arbitrators, as well as their personal expenses in connection therewith.

If the parties aggrieved or the parties defendant shall fail to notify the commissioner of the appointment of an arbitrator within fifteen days after the rendition of the commissioner's decision, the commissioner shall appoint the arbitrator for the parties in default.

SECTION. 2. The decisions of the arbitrators, as above provided for, shall be final and conclusive, and the decisions of said board shall become immediately effective when rendered, unless otherwise provided for in the decision.

Each member of the association hereby severally agrees for itself, in advance, to be bound by the action of the arbitrators as a tribunal of its own voluntary selection.

SECTION 3. The board of arbitration of the association shall, from time to time, make or amend rules of procedure for the trial of cases submitted to it and the submission of arguments, as it may deem proper.

ARTICLE TWELFTH.

Duties of the secretary.

SECTION 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of the association and copies furnished to each member. He shall also act as secretary to the executive board and to all committees herein provided for, and preserve similar records of their proceedings, and perform
279 such other duties as may be assigned him by the commissioner.

ARTICLE THIRTEENTH.

Duties of the commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as the representative of each of its members severally shall act for them in all matters that come within the jurisdiction of the association, in conformity with the requirements of this contract and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for either by this agreement or by the executive board and committees acting under its authority and sanction. When directed by the executive board the commissioner shall also take charge of the reports and claims, and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also, as the representative of each member of the association severally appointed for that purpose, reduce the rates whenever, in his judgment, the exigencies of the case shall so demand, to meet

the competition of lines or roads not parties to this agreement and of lines parties to this agreement when such lines fail to maintain the rates as established in the modes provided for in this agreement; and he shall at the same time make, upon request of any interested member, corresponding reductions from other points from which relative rates are made, preserving established differentials. His interpretation of any decision by arbitration shall be binding on all parties until an appeal from the same has been made to arbitration and a decision announced. He shall have, by the special delegation of each member of the association, separately conferred, such authority over the traffic officers and their subordinates and over the accounting depart-
280 ments of the several parties hereto as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as he may deem necessary. He shall have access, either in person or by deputy, to the books, papers, correspondence, etc., etc., of any of the officers, agents, or employees of the several parties hereto that relate to the freight traffic covered by this agreement.

ARTICLE FOURTEENTH.

Accounts of traffic to be kept by the commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement and make such reports of the same as may be directed by the executive board.

ARTICLE FIFTEENTH.

Care and disbursement of funds.

SECTION 1. All disbursements of the funds of the association shall be made by the commissioner, who shall give bond with security in such amount as shall be satisfactory to the executive board that he will duly and properly account for all moneys belonging to members of the association which may in any manner come into his possession or under his control. No payment shall be made except on properly receipted vouchers. Said vouchers and all the accounts of the commissioner shall be audited at least quarterly by the executive board, or by such person or persons as it may appoint for that purpose.

ARTICLE SIXTEENTH.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time of shipments to which they appertain are made, and shall show the original shipping point and through rates and also the divisions thereof so far as such divisions are provided for in
281 this agreement, and abstracts of all such manifest shall be furnished to the commissioner at the expira-

tion of each month; but it is understood that members of the association shall not have access to any of such manifests or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the commissioner, or such agents as he may from time to time *to* appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

ARTICLE SEVENTEENTH.

Copies of rates to be sent to officers or members.

SECTION 1. Copies of all rates that may from time to time be agreed upon or fixed in the manner provided shall be printed and published as the rates of the members of the association, and not as rates of the association itself; and they shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith and that no variations are made from such rates or manifests by voucher or otherwise.

ARTICLE EIGHTEENTH.

All-rail rates.

SECTION 1. That all-rail rates between the ports of Boston, Providence, New York, Philadelphia, and Baltimore and points in the territory of the association, except Chattanooga and Knoxville, Tenn., and except points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and except points on and west of the Mobile and Ohio Railroad, Meridian to Mobile, Ala., both inclusive, shall be higher than the rates by combined water and rail lines by the following differentials:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
12	10	9	8	6	5	5	5	5	5	6	8	10

until changed by agreement or aribitration.

282 Commodities not otherwise specified ..... 5 cents per 100 lbs.

Cotton-seed oil, cotton-seed meal, cotton-seed cake, north bound ..... 2 cents per 100 lbs.

Pig iron, per ton of 2,268 lbs.	Not less than the following figures:
Cast iron, per ton of 2,000 lbs	To Baltimore ..... 25c.
	To Philadelphia, Jersey City, and New York.. 50c.
Scrap iron, per ton of 2,000 lbs	To Boston and Providence ..... 75c.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, and marble, rough or sawed, and ores, north bound, NO differential.

Cotton factory products, north bound.. 3 cents per 100 lbs.

To and from points in the territory above excepted, rates by all-rail and by combined water-and-rail lines may be the same.

SECTION 2. That the all-rail port rates thus formed shall be the basis for all-rail rates between points in the territory covered by this association and interior points in the Northern and Eastern States east of the territorial dividing line named in article 3, section 3, of this agreement; except where combinations on any of the all-rail gateways make less, when such combination rates shall apply.

Combined water and rail rates between association territory and interior Eastern territory.

SECTION 3. That the combined water and rail rates between the territory described in section 2 and the territory of the Southern States Freight Association (except Chattanooga and Knoxville, Tenn., points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and points on and west of the Mobile and Ohio Railroad, Meridian to Mobile, Ala., both inclusive), shall be lower than the all-rail rates by the following differentials, except where combinations on the ports make less totals, when combination rates shall apply via the combined water and rail lines:

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1.	2.	3.	4.	5.	6.	A	B.	C.	D.	E.	H.	F.
4	3	2	2	1	1	1	1	1	1	1	2	2

Commodities not otherwise specified, 1.

Until changed by agreement or arbitration.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, marble, rough or sawed, and ores, north bound, NO differential.

To and from points in the territory of the Southern States Freight Association above accepted, the rates by all-rail and by combined water and rail lines may be the same.

Cost of marine risks to be assumed only by the issue of insured bill of lading.

SECTION 4. The combined water and rail lines may insure against marine risks by issuing insured bills of lading, but in no other manner.

Method of changing all-rail and combined water and rail rates.

SECTION 5. All changes in rates in accordance with the preceding sections shall be made as provided by article 8.

All-rail differentials shall not be changed except by arbitration.

SECTION. 6. The above-named differentials as between all-rail lines, and water, or combined water and rail lines, including the eastern territory to which they apply, shall not be changed except by agreement or arbitration, which may at any time be called for by any party to this agreement.

ARTICLE NINETEENTH.

Reports of tonnage and revenue to the commissioner.

SECTION 1. The commissioner, with the approval of the executive board, shall organize such a system for the rendition of tonnage and revenue reports of the traffic covered by this agreement as shall enable the commissioner to be at all times fully informed of the movements thereof, and the observance of rates established therefor, in order that he may detect promptly any violation of rates, and keep each company or line informed of the action of the other companies or lines. For these purposes the commissioner, at his discretion, may appoint agents to examine the books of
284 the several members of the association, and inspectors of the weight and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carriers from the opening of packages by inspectors shall be prorated on the basis of revenue. The expenses of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April in a report to be made by the commissioner at the expiration of each year, and distributed to the members at least two weeks before the annual meeting.

ARTICLE TWENTIETH.

Differences referred to arbitration.

SECTION 1. All measures necessary to carry out the purposes and provisions of this agreement shall be taken with the consent hereby given of the several parties hereto; and should any question arise upon which they can not agree in relation to the terms of this contract, or to any matter covered by it, is shall, upon the request of any member, be decided by arbitration, as herein provided, it being one of the fu'damental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties contrary to the spirit and intent of this contract, and that all differences relating to the establishment, adjustment, and maintenance of rates upon the traffic covered by this contract, shall be adjusted by arbitration.

ARTICLE TWENTY-FIRST.

Reduction of rates forbidden.

SECTION 1. Whenever rates have been fixed by the rate committee, the commissioner, the executive board, or by arbitration, there shall be no reduction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indi-
285 rectly, by any special rate, rebate or drawback, or by payment of commissions, or by reductions on mani-

fests, or by combination of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free or reduced transportion, or in any manner, or by any device whatsoever; nor shall any time contracts be made, even at authorized rates, without the authority of the commissioner.

SECTION 2. It is distinctly understood and agreed that the maintenance of rates, as established under the rules of the association, is of the very essence of this agreement, and the parties hereto severally pledge themselves to maintain them, and to require all their respective connections to maintain such rates, and in the event of any company or line, or its connections—either members or nonmembers of the association—failing to conform to this obligation, the parties hereto severally pledge themselves to abide by and perform such directions as the executive board of the association may prescribe as a remedy; and in such cases the line or lines, members of the association, exchanging or participating in the benefits of business in question, shall not be entitled to vote as to the directions to be given by the executive board.

The parties hereto also severally agree to pay, by sight draft, to be drawn by the commissioner, such fines as may be imposed by arbitration for such failure to comply with such obligation.

It is understood and agreed that the directions to be prescribed by the executive board as remedies to secure the maintenance of rates, may include the expulsion from the association of parties who have been convicted of repeated violations of this agreement, and who have refused to pay the fines imposed.

Remedies to secure maintenance of rates, and fines imposed for failure to maintain them, shall also apply to underbilling weights, free passes, or reduced rates of transportation, time contracts, or any other device whatsoever, calculated to influence or control traffic, in violation of the association agreement.

286 ARTICLE TWENTY-SECOND.

Distribution of the expenses of the association.

SECTION 1. The expenses of the association shall be assessed upon the members pro rata, according to their gross revenue derived from the traffic covered by the agreement, subject to such regulations as may be established by the executive board, each member to advance at the beginning of the year three hundred ($300) dollars towards its proportion of the expenses.

ARTICLE TWENTY-THIRD.

Date effective, and period of validity of the agreement.

SECTION 1. This agreement shall become effective on the twenty-first day of October, 1895, and continue until dissolved by mutual consent. The fiscal year of the association shall commence on April 1st and terminate on March 31st.

Method of considering amendments to the agreement.

SECTION 2. Any member desiring to offer an amendment to the agreement shall present the same in writing to the president, or, in his absence, to the vice-president, who may either call a meeting of the association for its consideration, giving each member thirty days' notice of the amendment proposed and date of meeting, or he may cause a vote to be taken by correspondence. In either event a three-fourths vote of all members shall be necessary for the adoption of such amendment; provided, that no amendment shall be adopted except by unanimous vote of all the members within twelve months from the date of this contract, it being understood that any amendment that has been adopted other than by a unanimous vote after twelve months from the date of this contract shall become effective only after sixty days from its adoption.

Method and conditions under which members may withdraw from the agreement.

SECTION 3. Any member party hereto may withdraw from this agreement upon giving sixty days' notice to the commissioner of his intention to do so, but the giving of such notice shall not relieve such member from the payment of its proportion of the fixed expenses of the association for the current year ending on the 31st of July following, which shall be understood to be the salary of the commissioner, the three arbitrators, and office rent.

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THE WILMINGTON & WELDON R. R. CO.,
By H. WALTERS, *Vice-President.*
ATLANTA & WEST POINT R. R. CO.,
By GEO. C. SMITH, *Prest. & Gen'l Mgr.*
THE WESTERN RAILWAY OF ALA.,
By GEO. C. SMITH, *Prest. & Gen'l Mgr.*
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA.
By H. M. COMER, *Receiver.*
OCEAN STEAMSHIP CO.,
By H. M. COMER, *Receiver.*
SOUTHERN RAILWAY COMPANY,
By SAMUEL SPENCER, *President.*
THE NORFOLK & WESTERN RAILROAD COMPANY,
By HENRY FINK, *Receiver.*
C., N. O. & T. P. RY.,
S. M. FELTON, *Receiver.*
ALA. GREAT SOUTHERN R. R.,
S. M. FELTON, *Prest.*
THE SEABOARD AIR LINE.
By E. ST. JOHN, *Vice-Prest.*

COLUMBUS SOUTHERN RAILWAY CO.,
By S. F. PARROTT, *Genl. Mgr.*
MERCHANTS & MINERS TRANS. CO.,
By J. C. WHITNEY, *T. M.*
OLD DOMINION S. S. CO.,
By W. L. GUILLAUDEU, *Vice-Prest.*
ALABAMA MID. RY. CO.
BRUNSWICK & WEST. RD. CO.
SAVH. FLA. & WEST. RY. CO.
CHARLESTON & SAVH. RY. CO.,
By R. G. ERWIN, *V.-P. & G. C.*
*THE LOUISVILLE & NASHVILLE R. R. CO.,
(For its line between Birmingham, Ala., and Mobile, Ala., and its Alabama Mineral Division.)
By M. H. SMITH, *President.*
THE WESTERN & ATLANTIC.
By J. W. THOMAS.
EAST & WEST R. R. CO.,
Per CHAS. P. BALL, *Genl. Manager.*
288 THE GEORGIA RAILROAD COMPANY,
By THOS. K. SCOTT, *General Manager.*
THE CLYDE STEAMSHIP COMPANY.
(New York & Charleston line),
By M. H. CLYDE.
G. M. & G. R. R.
C. W. CHEARS, *Genl. Manr. for Receiver.*
GEORGIA SOUTHERN & FLORIDA RAILWAY,
W. B. SPARKS, *General Manager.*
CAPE FEAR & YADKIN VALLEY RY. CO.,
JOHN GILL, *Receiver.*
By J. W. FRY, *General Manager.*
THE BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT COMPANY,
By REUBEN FOSTER, *President.*
NEW YORK & TEXAS S. S. CO.,
C. H. MALLORY & CO., *General Agents.*
FLORIDA CENTRAL & PENINSULAR RAILROAD CO.,
By H. R. DUVAL, *President.*

EXHIBIT No. 5.—Filed by J. R. Thompson, p. 67.

Proof.

The Southern Railway and Steamship Association.

AGREEMENT.

This agreement, made this 14th day of July, A. D. 1894, by the parties whose signatures are hereby attached, witnesseth that

Whereas the establishment an' maintenance of tariffs of uniform rates, to prevent unjust discrimination such as necessarily arises from the

*[NOTE.—In a telegram dated October 25th, 1895, Mr. M. H. Smith, president, agreed to include the Pensacola & Atlantic Division in the mileage of the L. N. R. R. Co., placed in the association. File 26547.]

irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, it is important for the protection of the public; and

Whereas it is deemed to be the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing markets without unjust discriminations in favor of or against any city or section; and

289 Whereas these objects can be attained by the cooperation on the part of the various transportation lines engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi River; and

Whereas such cooperation is absolutely necessary to a strict compliance with the requirements of the act of Congress entitled "An act to regulate commerce."

Now, therefore, in order to secure such cooperation among the said transportation lines and to provide means for the prompt adjustment of the differences which may arise between them, by placing the conduct of all traffic common to two or more companies under well-defined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

ARTICLE FIRST.

Title of association.

SECTION 1. The association herein formed shall be styled the Southern Railway & Steamship Association.

ARTICLE SECOND.

Territorial limit for lines which may be included.

SECTION 1. The territory of the association shall be that territory lying south and west of the Virginias, south of the Ohio, and east of the Mississippi rivers. The traffic subject to this agreement shall be all business for which two or more of the parties hereto compete, having origin or destination within this territory. It is understood that the following traffic is not covered by this agreement: (1) Traffic carried between points on the Ohio and Mississippi rivers, (2) traffic between points on the designated northern and western boundary lines and points outside of the defined association territory, and (3) coke and bituminous coal.

Traffic not covered by this agreement.

Description of the local traffic that is exempted from operations of the agreement.

It is further understood and agreed that traffic to or from a local point on any line shall be considered local to that line throughout its transportation by such line, and so far as that line may be concerned, shall not be subject to this agreement; provided, that rates to or from such local point shall not be made so as to cut the rates fixed under the rules of the association to or from the nearest competing point through which such local traffic may pass.

Eastern and Western lines respectively defined.

290 SECTION 2. For the purposes of this agreement, Western lines as hereinafter referred to, shall be lines parties to this agreement, leading from Cincinnati and from Ohio and Mississippi River crossings west and south thereof

to association territory, and Eastern lines as hereinafter referred to shall be lines parties to the agreement leading from gateways east of Cincinnati.

Restriction of Western lines in making joint rates.

SECTION 3. Western lines shall not make joint rates on traffic passing between points east of a line drawn from Toronto, on the north shore of Lake Ontario, through Lewiston, Niagara Falls, Buffalo, Erie, Oil City, thence via line of the Alleghany Valley Railroad to Pittsburgh, thence down the Ohio River through Wheeling and Parkersburg to Huntington, W. Va., and Ironton, O., or common points adjacent thereto, as hereinafter defined, and points east of a line drawn from Chattanooga through Birmingham, Selma, and Montgomery, to Pensacola, Fla.

Restriction of Eastern lines in making joint rates.

SECTION 4. Eastern lines shall not make joint rates on traffic between points west of the line described in the preceding section, viz, from Toronto, on the north shore of Lake Ontario to Ironton, O., or points adjacent thereto as hereinafter defined, and points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon to Live Oak, Fla. Provided, however, that the Norfolk & Western Railroad may participate in traffic via Kenova at the rates established by the association between points in the territory on the east of its line from Columbus, O., to Kenova, and on the south of the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, Columbus, O., to Steubenville, O., and points on the east of the Chattanooga, Pensacola line as defined in section 3.

Western business in which the Norfolk & Western R. R. may participate.

Permission to Eastern and Western lines as to making common points rates.

SECTION 5. It is understood that the Eastern and Western lines shall be entitled to compete for traffic passing between points on the Toronto-Pittsburgh-Ironton line, as before designated, or points common thereto, and all association territory.

A common point is understood to be a point adja-
291 cent to the designated line, the rates from which are the same as from points immediately on such same line to Eastern cities and gateways, and also the same as from points on such designated line to Cincinnati and to Louisville.

Methods of mutual protection to Eastern and Western lines.

SECTION 6. For the mutual protection of the various interests, the companies parties to this agreement shall unite in carrying out the provisions as to Eastern and Western territories, so far as can be legally done, not only by refusing to unite in joint rates, as above provided, but where necessary, by exacting local rates, in event of traffic being offered to any member in violation of the provisions of this article.

Manner of fixing proportions of rates from Ohio and Mississippi River crossings and other gateways of the association applicable to traffic from beyond.

SECTION 7. The proportions of rates from Ohio and Mississippi River crossings and other gateways of the association, applicable to traffic shipped from points beyond such crossings and gateways, shall be fixed by the same methods as the rates from such crossings and gateways proper, or as rates between points within the association territory.

ARTICLE THIRD.

Time and place for holding conventions.

SECTION 1. The representatives of the several companies members of this association, shall meet in convention annually, on the second Wednesday in June, in the city of New York, or at such other time and place as may be agreed upon by a majority of the members, and special meetings may be called at any time, as hereinafter provided.

ARTICLE FOURTH.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such other matters as can not be properly determined by the executive board, with the aid of the board of arbitration.

Each company a member of the association shall
292 have one vote. Two-thirds of the whole vote of the members present shall be required to make action of the convention binding.

Companies members of the association may be represented in the convention by the president, receiver, vice-president, general manager, traffic manager, superintendent, or general freight agent, in person or by proxy, provided such proxy presents to the secretary proper authority for such representation.

In case of more than one nomination being made for any office, the election shall be by ballot.

ARTICLE FIFTH.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting, and shall hold their offices until the next annual meeting and thereafter until their successors are elected: President, vice-president, commissioner, three arbitrators. A secretary shall be appointed by the commissioner; a secretary to the board of arbitration shall be appointed by that body, both appointments subject to confirmation by the executive board at its first meeting thereafter.

SECTION 2. In the event of a vacancy occurring in any elective office, the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president to be held within twenty days after the vacancy occurs.

ARTICLE SIXTH.

Companies or lines members of the association entitled to representation on the executive board.

SECTION 1. Such lines or companies as may execute this agreement shall each designate a representative, who shall represent them in all matters of business with the association or its members. The several representatives so desig-

nated shall constitute the executive board, of which the commissioner shall be chairman. If any company or line which is entitled to a representative fails to appoint one, or if their representative be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

293 ARTICLE SEVENTH.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner, whenever and wherever in his judgment it is necessary, or when any three members of the board request it; but all such calls must state the object of the meeting and the subjects to be acted on by the board.

Commissioner shall represent absent members.

All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes cast by the commissioner for absent members, at any time, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted on in the meeting of the executive board, but the assent of absent members must be obtained, or a decision of the board of arbitration, before such action becomes binding upon them.

Jurisdiction of executive board.

The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement, but shall act only by unanimous consent of all its members. In the event of a failure to agree, the question at issue shall be settled by the board of arbitration, as hereinafter provided for.

Recognition of the principle of apportionment of business.

SECTION 2. The principle of an apportionment of business, subject to arbitration, shall be recognized in the operations of the association, so far as this can be lawfully done.

Apportionment of the cotton business.

In pursuance of this principle, when any member or members of the association interested as an initial line or lines from any competing point in association territory shall desire an apportionment of the cotton traffic from such point, such apportionment shall be made; and in case an agreement can not be reached between the initial lines as to the allotment to each, such allotment shall be made by the board of arbitration.

When in such apportionment between initial lines the facilities afforded to any such line by its connections
294 extending to the ports are presented by it for consideration in fixing its allotment, the board of arbitration shall also consider and determine what proportion of the traffic allotted to such initial line shall be accorded to its connections.

Executive board authorized to make rules and regulations for the apportionment of other traffic.

The executive board shall have power from time to time to make rules and regulations and prescribe methods not inconsistent with this agreement for the apportionment of other traffic.

ARTICLE EIGHTH.

Executive board may appoint rate committees and other committees.

SECTION 1. The executive board shall appoint a rate committee or rate committees, and at its discretion other committees, either from among its owner number or from among the officers and agents of the companies members of the association, and may delegate to such committees jurisdiction over matters especially committed to their charge.

Authority of rate committee.

SECTION 2. Questions of rates and classifications affecting the traffic covered by this agreement shall be first presented for consideration by the rate committee, and in establishing rates and classifications on all traffic covered by this agreement the rate committee or committees shall keep in view a proper relative adjustment of all rates, and especially on similar articles from the East and the West to common territory. If the rate committee shall omit to make rates on any traffic covered by this agreement, the commissioner shall have authority to make rates thereon. Such rates made by the commissioner shall be presented for action of the rate committee at its next meeting, but shall remain in effect until changed by said committee, the executive board, or the board of arbitration, it being the intention that there shall be properly authenticated tariffs of rates on all traffic subject to this agreement.

Commissioner authorized to make rates.

Rate committees shall act only by unanimous consent.

SECTION 3. Rate committees shall only act by unanimous consent, and, failing to agree, the question at issue shall, upon demand of any member, be referred to the executive board for action at its next meeting, or the votes of members of the executive board may be taken separately and apart by correspondence, and such questions may be submitted direct to the board of arbitration when authorized by a majority of the executive board.

295

Commissioner shall be ex officio chairman of all rate committees and shall represent absent members.

SECTION 4. The commissioner shall be ex officio chairman of all rate committees and shall be the medium of communication between such committees and the executive board. Absent members of rate committees shall be represented by the commissioner, as in case of absent members of executive board. During the interim between the reference of any matter of difference from a rate committee to the executive board and the final determination of such matter the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily, and his decision shall be binding on all parties until changed by the executive board or by arbitration.

Commissioner shall have authority to decide temporarily questions on which rate committees fail to agree.

ARTICLE NINTH.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board shall have authority to make from time to time such rules and regulations, not inconsistent with this agreement, as may be necessary to secure a systematic conduct of the affairs of the association and attain the objects for which it is formed.

ARTICLE TENTH.

Duties of president.

SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such meetings, and communicate the proceedings to all the members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is in his judgment necessary.

Duties of the vice-president.

SECTION 2. The vice-president, in the absence of the president, shall be empowered to perform all the duties of the president, and in the absence of the vice-president a
296 chairman may be selected from the members of the association.

ARTICLE ELEVENTH.

Duties of board of arbitration.

SECTION 1. The board of arbitration shall hear and determine all questions which may be submitted to it covered by this agreement, or by consent of the parties, and the decisions of the said board shall become immediately effective.

Upon presentation to the board of arbitration of new or additional testimony, the said board may at its discretion grant a rehearing, but pending this rehearing and thereafter the decision already rendered shall be effective until suspended or changed by the said board.

The decisions of the board of arbitration shall be final and conclusive.

ARTICLE TWELFTH.

Duties of the secretary

SEC. 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of the association, and copies furnished to each member. He shall also act as secretary to the executive board, and to all committees herein provided for, and preserve similar records of their proceedings, and perform such other duties as may be assigned him by the commissioner.

ARTICLE THIRTEENTH.

Duties of the commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as a representative of its members, both severally and jointly, shall act for them in all matters that come within the jurisdiction of the association, in conformity with the requirements of this contract and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for, either by this agree-
297 ment or by the executive board and committees acting under its authority and sanction. When directed by the executive board, the commissioner shall also take

charge of the reports and claims, and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business, on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also reduce the rates whenever, in his judgment, the exigencies of the case shall so demand, to meet the competition of lines or roads not parties to this agreement, and of lines parties to this agreement when such lines fail to maintain the rates as established under the agreement; and he shall at the same time make, upon request of any interested member, corresponding reductions from other points from which relative rates are made, preserving established differentials. His interpretation of any decision of the board of arbitration shall be binding on all parties until an appeal from the same has been made to the board of arbitration and a decision announced. He shall have such authority over the traffic officers and their subordinates and over the accounting departments of the parties hereto as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as he may deem necessary. He shall have access, either in person or by deputy, to the books, papers, correspondence, etc., of any of the officers, agents, or employés of the parties hereto that relate to the freight traffic covered by this agreement.

ARTICLE FOURTEENTH.

Accounts of traffic to be kept by the commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement, and make such reports of the same as may be directed by the executive board.

ARTICLE FIFTEENTH.

Care and disbursement of.

SECTION 1. All disbursements of the funds of the
298 association shall be made by the commissioner, who shall give bond with security, in such amount as shall be satisfactory to the executive board, that he will duly and properly account for all moneys of the association, or belonging to members thereof, which may in any manner come into his possession or under his control. No payment shall be made except on properly receipted vouchers; said vouchers and all the accounts of the commissioner shall be audited at least quarterly by the executive board, or by such person or persons as it may appoint for that purpose.

ARTICLE SIXTEENTH.

Deposit to pay fines.

SECTION 1. In order to provide for the prompt payment of any fines that may be assessed against any member of this

association for violating its rules, each company shall deposit with the commissioner an amount equivalent to four ($4.00) dollars for each mile of the road operated by said company under the provisions of this agreement, or in case where a company operates a water line, four ($4.00) dollars for each mile allowed as a prorating distance in the division of through rates; provided, such amounts shall not exceed in the aggregate the sum of five thousand ($5,000) dollars or less than five hundred ($500) dollars for any one company; but in all cases where fines are assessed the commissioner is hereby authorized, after ten days' notice to them, to draw at sight on the parties against whom such fines are assessed for the full amount of said fines, and each company party to this agreement hereby binds itself to promptly pay such drafts, it being the intent and meaning of this section that the deposit herein provided for shall not be diminished by reason of the payment of any fines that may be assessed against a company making such deposit.

ARTICLE SEVENTEENTH.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished
299 with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time of shipments to which they appertain are made, and shall show the original shipping points and through rates, and also the divisions thereof, so far as such divisions are controlled by this agreement, and abstracts of all such manifests shall be furnished to the commissioner at the expiration of each month; but it is understood that members of the association shall not have access to any of such manifests, or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the commissioner, or such agents as he may from time to time appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

ARTICLE EIGHTEENTH.

Copies of rates to be sent to officers or members.

SECTION 1. Copies of all rates that may from time to time be agreed upon, or fixed in the manner provided, shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith, and that no variations are made from such rates or manifests, by voucher or otherwise.

ARTICLE NINETEENTH.

All rail rates.

SECTION 1. That all rail rates between the ports of Boston, Providence, New York, Philadelphia, and Baltimore

and points in the territory of the association, except Chattanooga and Knoxville, Tenn., and except points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and except points on and west of the Mobile & Ohio Railroad, Meridian to Mobile, Ala., both inclusive, shall be higher than the rates by combined water and rail lines by the following differentials:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
12.	10.	9.	8.	6.	5.	5.	5.	5.	5.	6.	8.	10.

Until changed by agreement or arbitration.

300	Commodities, not otherwise specified	5 cents per 100 lbs.
	Cotton-seed oil, cotton-seed meal, cotton-seed cake, north bound.....	2 cents per 100 lbs.

Pig iron per ton of 2,268 lbs.	Not less than the following figures:	
Cast-iron pipe, per ton of 2,000 lbs	To Baltimore.....	25c.
	To Philadelphia, Jersey City, and New York	50c.
Scrap iron, per ton of 2,000 lbs	To Boston and Providence	75c.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone and marble, rough or sawed, and ores, north bound, NO differential.

Cotton factory products, north bound, 3 cents per 100 lbs.

To and from points in the territory above excepted rates by all-rail and by combined water and rail lines may be the same.

SECTION 2. That the all-rail port rates thus formed shall be the basis for all-rail rates between points in the territory covered by this association and interior points in the Northern and Eastern States east of the territorial dividing line named in article 2, section 3 of this agreement; except where combinations on any of the all-rail gateways make less, when such combination rates shall apply.

Combined water and rail rates between association territory and interior Eastern territory.

SECTION 3. That the combined water and rail rates between the territory described in section 2, and the territory of the Southern Railway & Steamship Association (except Chattanooga and Knoxville, Tenn., points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and points on and west of the Mobile & Ohio Railroad, Meridian to Mobile, Ala., both inclusive) shall be lower that the all-rail rates by the following differentials,

except where combinations on the ports make less
301 totals, when combination rates shall apply via the combined water and rail lines:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4	3	2	2	1	1	1	1	1	1	1	2	2

Commodities not otherwise specified, 1.

Until changed by agreement or arbitration.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, marble, rough or sawed, and ores, northbound, NO differential.

To and from points in the territory of the Southern Railway & Steamship Association above excepted the rates by all-rail and by combined water and rail lines may be the same.

Cost of marine risks to be assumed only by the issue of insured bills of lading.

SECTION 4. The combined water and rail lines may insure against marine risks by issuing insured bills of lading, but in no other manner.

Method of changing all rail and combined water and rail rates.

SECTION 5. All changes in rates in accordance with the preceding sections shall be made as provided by article 8.

All rail differentials shall not be changed except by arbitration.

SECTION 6. The above-named differentials as between all-rail lines and water, or combined water and rail lines, including the eastern territory to which they apply, shall not be changed except by agreement or arbitration, which may at any time be called for by any party to this agreement.

ARTICLE TWENTIETH.

Reports of tonnage and revenue to the commissioner.

SECTION 1. The commissioner, with the approval of the executive board, shall organize such a system for the rendition of tonnage and revenue reports of the traffic covered by this agreement as shall enable the commissioner to be at all times fully informed of the movements thereof, and the observance of rates established therefor, in order that he may detect promptly any violation of rates, and keep each company or line informed of the action of the other companies or lines. For these purposes, the commissioner, at his discretion, may appoint agents to examine the books of the members of the association, and inspectors of the
302 weight and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carriers from the opening of packages by inspectors shall be prorated on the basis of revenue. The expenses of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April in a report to be made by the

commissioner at the expiration of each year and distributed to the members at least two weeks before the annual meeting.

ARTICLE TWENTY-FIRST.

Differences referred to arbitration.

SECTION 1. All measures necessary to carry out the purpose of this agreement shall be taken jointly by the parties hereto; and should any question arise upon which they can not agree in relation to the terms of this contract, or to any matter covered by it, it shall, upon the request of any member, be decided by arbitration as herein provided, it being one of the fundamental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties contrary to the spirit and intent of this contract, and that all differences relating to the 'stablishment, adjustment, and maintenance of rates upon the traffic covered by this contract shall be adjusted by arbitration.

ARTICLE TWENTY-SECOND.

Reduction of rates forbidden.

SECTION 1. Whenever rates have been fixed by the rate committee, the commissioner, the executive board, or by arbitration, there shall be no reduction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indirectly, by any special rate, rebate, or drawback, or by payment of commissions, or by reductions on manifests, or by com-
303 bination of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free or reduced transportation, or in any manner, or by any device whatsoever, or shall any time contracts be made even at authorized rates without the authority of the Commissioner.

SECTION 2. It is distinctly understood and agreed that the maintenance of rates as established under the rules of the association is of the very essence of this agreement, and the parties hereto pledge themselves to maintain them and to require all their connections to maintain such rates, and in the event of any company or line or its connections not members of the association failing to conform to this obligation, the other parties in interest pledge themselves to increase their proportions of through rates sufficiently to protect the authorized rates, and, with the approval of two-thirds of the executive board, to apply full local rates upon all traffic subject to the association agreement coming from or going to such offending lines, when required by the commissioner to do so.

Provided, that the remedy to secure a maintenance of rates shall also apply to underbilling weights, free passes or reduced rates of transportation, time contracts, or any other

device whatsoever calculated to influence or control traffic in violation of the association agreement.

Method of procedure in case of violations of agreement and enforcement of penalties.

SECTION 3. Whenever the commissioner shall have reason to believe that the rates, as established under the rules of the association, are not being fully maintained, or that the rules or regulations or provisions of the agreement designed to secure the maintenance are not being complied with by any line or company member of the association, it shall be his duty to make a full investigation of the facts in such cases, and if, in his judgment, there has been any violation of the agreement on the part of any member or members of this association, he shall submit the evidence in such case to the board of arbitration, in accordance with regulations to be established by the executive board for that purpose, and if the board of arbitration shall find, after a full hearing of the case, that any member is or has been guilty of violating this agreement, it shall impose such penalty therefore as it may deem proper and commensurate with the injuries inflicted upon the association, and of competing lines parties to this agreement, provided the infliction and enforcement of one penalty shall not prevent the infliction and enforcement of other penalties in case of continued or further violation of the agreement by the same member. The commissioner shall enforce such penalties, making use, if necessary, of the fund provided for such purpose. Any surplus over and above the amount that may be awarded by the board of arbitration to indemnify any member for losses sustained shall be applied to the payment of the expenses of the association. And the board of arbitration shall state in its decision, how much, if any, of the award is to be paid to members who have sustained loss, and how much to each, the remainder to be applied to the general expenses of the association; provided, however, that members against whom penalties are assessed shall not become beneficiaries of any money paid under such decision.

304

Authority of board of arbitration to make or amend rules for trial of cases.

SECTION 4. The board of arbitration shall, from time to time, make or amend rules of procedure for the trial of such cases, and the submission of arguments in cases referred to it for decision, as it may deem proper.

Authority of the commissioner over members on violation of terms of agreement.

SECTION 5. Under any of the circumstances mentioned in section 3, the commissioner shall immediately issue instructions to the member or members charged with the violation, as he may deem advisable, pending action of the board of arbitration. If the member fails to comply with such order, the commissioner may take such steps for the protection of the association as he may deem advisable, with the approval of two-thirds of the executive board.

ARTICLE TWENTY-THIRD.

Distribution of the association the expenses of the association.

SECTION 1. The expenses of the association shall be assessed upon the members pro rata, according to
305 their gross revenue derived from the traffic covered by the agreement, subject to such regulations as may be established by the executive board, each member to advance at the beginning of the year three hundred ($300) dollars towards its proportion of the expenses.

ARTICLE TWENTY-FOURTH.

Period of validity of agreement.

SECTION 1. This contract shall be considered as a renewal of the contract terminating on the first day of August, 1894, and shall terminate on the 31st day of July, 1895, and the fiscal year of the association shall terminate on the first day of April, 1895.

EXHIBIT No. 6.—Filed by J. M. Brown, p. 72.

Freight tariff classes—Percentages.

Each company doing business as a common carrier in this State is allowed to apply the standard freight tariff, subject to the conditions of the tariff class below in which such company is placed.

Class No. 1.

The standard tariff, without percentage.

Class No. 2.

To classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L, M, N, O, and R add ten per cent to commissioners' standard tariff.

To classes C, D, F, J, and P apply the commissioners' standard tariff.

Class No. 3.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L*, N, O the standard tariff with twenty per cent added.

On classes B, K, M, R the standard tariff with ten per cent added.

On classes C, D, F, J, and P the standard tariff without percentage.

*On lime and ice the standard tariff with ten per cent added.

306 Class No. 4.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L,* N, O, the standard tariff with twenty-five per cent added.

On B, K, M, R, the standard tariff with ten per cent added.

On Classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, Class L, with ten per cent added.

Class No. 5.

Add twenty-five per cent to all classes, except C, D, F, J, and P.

Class No. 6.

On classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L,* M,* N, O, and R:* For 40 miles and under, the standard tariff with fifty per cent added; for 70 miles and over 40 miles, the standard tariff with forty per cent added; for 100 miles and over 70 miles, the standard tariff with thirty per cent added; over 100 miles, the standard tariff with twenty per cent added.

*On fertilizers, L. C. L., Class K, with ten per cent added for any distance.

*On fertilizers, C. L., Class M, with ten per cent added for any distance.

*On turpentine, Class R, with ten per cent added for any distance.

*On Classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, the standard tariff with ten per cent added.

Class No. 7.

On classes 1, 2, 3, 4, 5, 6, A, B, E, H, and K, commissioners' standard tariff with fifty per cent added.

On Classes C, D, F, G, J, L, M, N, O, and R, commissioners' standard tariff with twenty-five per cent added.

On Class P, commissioners' standard tariff.

307. *Classified list of railroads in Georgia.*

For freight tariffs see corresponding numbers on opposite page.

Class No. 1. (No. of roads, 4.)

Alabama Great Southern.
Georgia (except G., J. and S. branch.)
Lexington Terminal.
Western and Atlantic.

Class No. 2. (No. of roads, 3.)

Atlanta and West Point.
Hartwell.
Seaboard Air-Line.

Class No. 3. (No. of roads, 4.)

Douglas and McDonald.
Florida Central and Peninsular.
Plant System (all lines).
Tifton and Northeastern.

Class No. 4. (No. of roads, 7.)

Central System (all lines except Savannah and Atlantic).
Chattanooga, Rome and Columbus.
East and West.

Lawrenceville.
Marietta and North Georgia.
Northeastern, of Georgia.
Southern Railway System (all lines).

Class No. 5. (No. of roads, 3.)

Gainesville, Jefferson and Southern (branch Georgia Railroad).
Smithsonia and Dunlap.
Talbotton.

Class No. 6. (No. of roads, 32.)

Abbeville and Waycross.
Albany and Northern.
308 Augusta Southern.
Augusta and Knoxville.
Blue Ridge and Atlantic.
Chattanooga Southern.
Chicamauga and Durham.
City and Suburban.
Columbus Southern.
Cuyler and Woodburn.
Darien and Western.
Foy Railroad.
Georgia and Alabama (formerly S., A. and M. Ry.).
Georgia Midland and Gulf.
Georgia Northern (formerly Boston and Albany).
Georgia Southern and Florida.
Hawkinsville and Florida Southern.
Indian Springs and Flovilla.
Louisville and Wadley.
Macon, Dublin and Savannah.
Macon and Northern.
Middle Georgia and Atlantic.
Midville, Swainsboro and Red Bluff.
Millen and Southern.
Oconee and Western.
Sandersville.
South Brunswick.
Stillmore Air-Line.
Valdosta Southern.
Wadley and Mt. Vernon.
Waycross Air-Line.
Wrightsville and Tennille.

Class No. 7. (No. of roads, 2.)

Dover and Statesboro.
Sylvania.

309 *Standard freight tariff—Classes.*

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	**30**	**27**	**25**	**22**	**18**	**13**	**13**	**13**	**8½**	**8**	**18**	**17½**	**7**	**22**
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	**45**	**40**	**35**	**30**	**23**	**18**	**18**	**18**	**11½**	**11**	**23**	**23**	**8½**	**30**
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	**60**	**50**	**45**	**35**	**28**	**23**	**23**	**23**	**14**	**13**	**28**	**28**	**9**	**35**
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

310 *Standard freight tariff—Classes*—Continued.

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**33**	**9½**	**40**
210	71	62	51	41	33	28	28	28	17	16	33	34	9½	41
220	72	64	52	42	33	28	28	28	17	16	33	34	10	42
230	73	66	53	43	34	29	29	29	18	17	34	36	10½	43
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	44
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**45**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	46
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	46
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	47
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	47
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**48**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	48
320	82	74	59	49	39	34	34	34	21	20	39	42	11	49
330	85	74	59	49	39	34	34	34	22	20	39	44	11	49
340	84	74	59	49	39	34	34	34	22	20	39	44	11	49
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**50**
360	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
370	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
380	88	76	61	51	41	36	36	36	25	23	41	50	11½	52
390	88	76	61	51	41	36	36	36	25	23	41	50	11½	52
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**52**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
430	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
440	94	78	63	53	43	38	38	38	26	24	43	52	11½	54
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11½**	**56**
460	94	78	63	53	43	38	38	38	27	25	43	54	12	56

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.00	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6½	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7½	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**8**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	24.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	23
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	24
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	25
320	47	17	3.05	2.20	38.00	26.00	24.00	25
330	48	17	3.15	3.30	38.50	27.00	25.00	25
340	49	17	3.15	3.40	39.00	27.00	25.00	25
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	25
390	54	18	3.41	3.60	42.00	29.00	27.00	25
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**25**
410	56	19	3.54	3.70	44.00	31.00	29.00	25
420	57	19	3.54	3.70	44.00	31.00	29.00	25
430	58	19	3.54	3.70	44.00	31.00	29.00	25
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

Passenger, class B (four cents per mile).
Freight, class No. 6 (see page No. 64).

Distance table.

WADLEY	0	Riner	19	Odomville	25
Pinetucky	8	Meeks	20	Adrian	28
Kite	15	Ethel	22	Rixville	30
Hodo	17				

WAYCROSS AIR-LINE RAILROAD.

Passenger, class B (four cents per mile).
Freight, class No. 6 (see page No. 64).

Distance table.

Waycross	0	Boleu	15	Sessoms	25
Watertown	6	Beach	20	Nicholls	30
Elsie	11				

WESTERN & ATLANTIC RAILROAD.

Passehger, class A (three cents per mile).
Freight, class No. 1 (see page No. 64).

Distance table.

	ATLANTA	0
	Bolton	7
	Gilmore	9
	Vining's	11
	Smyrna	15
	MARIETTA	20
	Elizabeth	22
	Kennesaw	29
	Acworth	35
	Allatoona	40
	Bartow	42
	Emerson	43
	CARTERSVILLE	48
	Rogers'	51
	Cass	52
	Best's	55
	KINGSTON	59
313	Hall's	64
	Adairsville	68
	McDaniel's	75
	Calhoun	78
	Resaca	84
	Tilton	90
	DALTON	99
	Tunnel Hill	107
	Ringgold	114
	Graysville	120
	Chicamauga, Tenn	126
	CHATTANOOGA, TENN	137

ROME BRANCH.

Distance table.

	Kingston	0
	Wooley's	3

Murchison's 4
Eves 7
Bass Ferry 9
Dykes 11
Freemans 12
Brick Yard 16
Second Avenue 17
Rome 18

WRIGHTSVILLE & TENNILLE RAILROAD.

Passenger, class A (three cents per mile).
Freight, class No. 6 (see page No 64).

Distance table.

TENNILLE 0
Lindsays 4
Peacock's Cut 6
Harrison 10
Donovan 14
WRIGHTSVILLE 17
Meadow's 21
Lovett 24
Donaldson 26
Bruton 28
Condor 32
DUBLIN 36

314 Act creating the railroad commission of Georgia, and acts amendatory thereto, with extracts from the constitution of the State of Georgia and laws of the State relating to railroads.

The following is the law under which the railroad commission was created, being act No. 269, Part 1, Title 12, of the acts and resolutions of the general assembly of the State of Georgia, 1878–1879:

An act to provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rate, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint commissioners, and to prescribe their powers and duties in relation to the same.

Whereas, It is made the duty of the general assembly, in article 4, paragraph 2, and section 1 of the constitution, to pass laws from time to time to regulate freight and passenger tariffs; to prohibit unjust discrimination on the various railroads of this State, and to prohibit railroads from charging other than just and reasonable rates, and enforce the same by adequate penalties; therefore,

(Commissioners' appointment, term, and salary.)

SECTION I. Be it enacted by the general assembly of Georgia, that there shall be three commissioners, appointed by the governor, with the advice and consent of the senate, to carry out the provisions of this act, of whom one shall be of experience in the law and one of experience in the railway business. After the expiration of the terms of the office of the commissioners first appointed, the term of office of successors shall be six years; but at the first appointment one commissioner shall be appointed for two years, one for four years, and one for six years. The salary of each commissioner shall be twenty-five hundred dollars, to be paid from the treasury of the State. Any commissioner may be suspended from office by order of the governor, who shall report the fact of such suspension, and the reasons therefor, to the next general assembly, and if a majority of each branch of the general assembly declare that said commissioner shall be removed from office, his term of office shall
315 expire. The governor shall have the same power to fill vacancies in the office of commissioner as to fill other vacancies, and if, for any reason, said commissioners are not appointed during the present session of the general assembly, the governor shall appoint them thereafter, and report to the next senate, but the time until then shall not be counted as part of the term of office of said commissioners, respectively, as herein provided. Said commissioners shall take an oath of office, to be framed by the governor, and shall not, jointly or severally, or in any way, be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company, or have any interest in any way in any railroad, and shall so continue during the term of office; and in case any commissioner becomes disqualified in any way, he shall at once remove the disqualifications or resign, and on failure so to do he must be suspended from office by the governor and dealt with as hereinafter provided. In any case of suspension the governor may fill the vacancy until the suspended commissioner is restored or removed.

(Location of office, employment of secretary, expenses, etc.)

SEC. II. That said commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a secretary or clerk, at a salary of twelve hundred dollars, at the expense of the State. The office of said commissioners shall be kept in Atlanta, and all sums of money authorized to be paid by this act out of the State treasury shall be paid only on the order of the governor: Provided, That the total sum to be expended by said commissioners for office rent, furniture, and stationery shall in no case exceed the sum of eight hundred ($800) dollars, or so much thereof as may be necessary, per annum.

(Extortion by railroads forbidden.)

SEC. III. That from and after the passage of this act, if any railroad corporation, organized or doing business in this State, under an act of incorporation or general law of this State now in force, or which hereafter may be enacted, or any railroad corporation organized, or which hereafter may be organized, under the laws of any other State and doing business in this State, shall charge, collect, demand, and receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or

permission to use, operate, or control, the same shall be deemed guilty of extortion, and, upon conviction thereof, shall be dealt with as hereinafter provided.

(Unjust discrimination forbidden.)

SEC. IV. That if any railroad corporation as aforesaid shall
316 make any unjust discrimination in its rates or charges for toll or compensation for the transportation of passengers or freights of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license, or permission to operate, control or use, within this State, the same shall be deemed guilty of having violated the provisions of this act, and, upon conviction thereof, shall be dealt with as hereinafter provided.

(Duty of commissioners.)

SEC. V. That the commissioners appointed, as hereinbefore provided, shall, as provided in the next section of this act, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads thereof; shall make reasonable and just rules and regulations, to be observed by all railroad companies doing business in this State, as to charges at any and all points, for the necessary handling and delivering of freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discriminations in the transportations of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting railroads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the location of such depots, and the establishment of such freight and passenger buildings as the condition of the road, the safety of freight, and the public comfort may require: Provided, however, That before applying joint rates to roads that are not under the management and control of one and the same company the commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried; and shall make just and reasonable rules and regulations, to be observed by said railroad companies on said railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers: Provided, That nothing in this act contained shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad compa-
317 nies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this act; and said commissioners shall have full power by rules and regulations to designate and fix the difference in rates of freight and passenger transportation, to be allowed for longer and shorter distances on the

same or different railroads, and to ascertain what shall be the limits of longer and shorter distances.

(Commissioners shall make schedule of rates, publish same, etc.)

SEC. VI. That the said railroad commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for the transportation of passengers and freights and cars on each of said railroads; and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said commissioners shall, from time to time, and as often as circumstances may require, change and revise said schedules. [When any schedule shall have been made or revised, as aforesaid, it shall be the duty of said commissioners to cause publication thereof to be made for one time in some public newspaper published in the cities of Atlanta, Augusta, Albany, Savannah, Macon, Rome, Athens, Americus, and Columbus, in this State, at a rate not to exceed fifty cents per square of usual advertising space when less than a column is occupied, or more than twelve dollars per column when as much space as a column or more is occupied, by inserting said schedule or change of any schedule, so that said newspaper shall not charge for such advertising any rate in excess of that allowed for county legal advertising; and after the same shall be so published, it shall be the duty of all such railroad companies to post at all their respective stations, in a conspicuous place, a copy of said schedule for the protection of the people: Provided, That the schedule thus prepared and published, as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication: Provided, That when any rate or change is made by the commissioners that affects only one road or roads in a particular locality, the insertion need only be made in the paper published in one of the cities named nearest where the change is made (act 27th September, 1883):

Provided, That the schedules thus prepared shall not be taken as
318 evidence, as herein provided, until schedules have been prepared and published, as aforesaid, for all railroad companies now organized, under the laws of this State, or that may be organized at the time of said publication. All such schedules, purporting to be printed and published as aforesaid, shall be received and held in all such suits as prima facie the schedules of said commissioners, without further proof than the production of the schedules desired to be used as evidence, with a certificate of the railroad commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been duly published as required by law.]

(Jurisdiction and power of commissioners.)

SEC. VII. That it shall be the duty of said commissioner to investigate the books and papers of all the railroad companies doing business in this State, to ascertain if the rules and regulations aforesaid have been

complied with, and to make personal visitation of railroad offices, stations, and other places of business for the purpose of examination, and to make rules and regulations concerning such examination, which rules and regulations shall be observed and obeyed as other rules and regulations aforesaid; said commissioners shall also have full power and authority to examine all agents and employees of said railroad companies and other persons, under oath or otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this act.

(Power of commissioners over contracts between railroads.)

SEC. VIII. That all contracts and agreements between railroad companies doing business in this State, as to rates of freight and passenger tariffs, shall be submitted to said commissioners for inspection and correction, that it may be seen whether or not they are a violation of law or of the provisions of the constitution, or of this act, or of the rules and regulations of said commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State shall be submitted to said commissioners for inspection and approval, in so far as they affect rules and regulations made by said commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariffs; and said commissioners may make such
319 rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreement, not approved by such commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held, and taken to be violations of article 4, section 1, paragraph 4 of the constitution, and shall be illegal and void.

(Penalty for violation of rules.)

SEC. IX. That if any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said commissioners; and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by the commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars, nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall lie in any county in the State where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The commissioners shall institute such action through the attorney-general or solicitor-general, whose fees shall be the same as now provided by law.

(Injuries resulting from violation of rules.)

SEC. X. That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the commissioners aforesaid, inflict any wrong or injury on any person, such person

shall have a right of action and recovery for such wrong or injury in the country where the same was done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that in cases of willful violation of law, such railroad companies shall be liable to exemplary damages; provided, that all suits under this act shall be brought within twelve months after the commission of the alleged wrong or injury.

(Rules of evidence.)

SEC. XI. That in all cases under the provision of this act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this act shall be paid into the State treasury, to be used for such purposes as the general assembly may provide. The remedies hereby given the persons injured shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies.

320 (Meaning of terms.)

SEC. XII. That the terms "railroad corporation," or "railroad company," contained in this act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

(Duplicate freight receipts.)

SEC. XIII. That all railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the article shipped upon payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate this provision of the statute, such railroad company shall incur a penalty to be fixed and collected as provided in section nine of this act.

(Reports of commissioners.)

SEC. XIV. That it shall be the duty of the commissioners herein provided for to make to the governor annual reports of the transactions of their office, and to recommend, from time to time, such legislation as they may deem advisable under the provisions of this act.

(Power of commissioners over witnesses.)

SEC. XV. That said railroad commissioners, in making any examination for the purpose of obtaining information pursuant to this act, shall have power to issue subpœnas for the attendance of witnesses, by such rules as they may prescribe. And said witnesses shall receive for such attendance two dollars per day, and five cents per mile, traveled by the nearest practicable route in going to and returning from the place of meeting of said commissioners, to be ordered paid by the governor upon

presentation of subpœnas, sworn to by the witnesses, as to the number of days served and miles traveled, before the clerk of said commissioners, who is hereby authorized to administer oaths. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the judge of the superior court of any county, upon application of said commissioners, to issue an attachment for such witness, and compel
321 him to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners, and said court shall have power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

(Railroad officers to report to commissioners.)

SEC. XVI. That every officer, agent, or employee of any railroad company who shall willfully neglect or refuse to make and furnish any report required by the commissioners, as necessary to the purpose of this act, or who shall willfully and unlawfully hinder, delay, or obstruct said commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum not less than one hundred, nor more than five thousand dollars for each offence, to be recovered in an action of debt in the name of the State.

SEC. XVII. That all laws militating against this act are hereby repealed.

Approved, October 14, 1879.

8764

322.

EXHIBIT No. 7.—Filed

Comparative statement of receipts and di

Year.	Receipts					
	From passenger.	From freight.	From mail.	From express.	From other sources.	Total.
From Dec. 27, '90, to July 1, '91	141,504.92	605,495.16	25,383.03	10,277.15	11,940.96	794,601.22
1892	308,298.01	1,142,271.68	49,791.30	23,252.21	36,707.42	1,560,320.62
1893	285,049.52	988,413.21	52,041.21	21,562.79	49,233.69	1,396,300.42
1894	267,337.79	899,097.43	51,603.08	17,486.24	55,248.75	1,290,773.29
1895	236,551.52	978,807.48	51,758.63	17,189.70	51,474.20	1,335,781.53
1896	341,112.07	1,106,208.65	51,395.40	20,551.85	49,194.64	1,568,462.61

by G. R. Knox, p. 162.

bursements on Western and Atlantic R. R.

Disbursements.						Surplus.	Expenses for rails, ties, bridges, etc.	Net deficit.	Net surplus.
Operating expenses.	Net earnings.	Rental.	Interest.	Taxes.	Total.				
660,114.57	134,486.65	214,522.26	.....	.....	214,522.26	.....	102,384.86	22,349.25	.....
1,084,829.13	475,481.49	420,012.00	.....	12,006.87	432,018.87	43,462.62	365,675.37	322,212.75	.....
955,540.95	440,659.47	420,012.00	.....	9,948.23	429,960.23	10,699.23 Deficit.	180,675.62	169,976.39	.....
823,623.48	457,149.81	420,012.00	37,968.37	8,148.95	466,129.32	8,979.51 Surplus.	13,875.98	22,855.49	.....
838,788.73	496,992.80	420,012.00	36,000.00	8,342.07	464,354.07	32,638.73	.....	.....	32,638.73
961,564.31	606,898.30	420,012.00	36,000.00	7,526.82	463,538.82	143,359.48	.....	.....	143,359.48

Year.	Total number tons hauled one mile.	Average receipts per ton per mile.	Total number tons hauled.	Average amount received per ton.	Earnings per train mile on N. & C. W. & A. would be less.	Estimated cost of running freight train one mile.
		Cents.				*Cents.*
Dec. 27, '90, to June 30, '91 ...	60,676,103	.0100	537,347	$1.1268	.....	.76
1892.....	123,488,111	.00998	1,128,190	1.0124	$1.51	.76
1893.....	107,246,626	.00927	1,044,814	.9460	1.67	.76
1894.....	96,106,063	.00891	914,255	.9371	1.48	.76
1895.....	120,790,267	.00810	1,076,536	.90922	1.38	.76
1896.....	133,058,430	.00831	1,281,840	.86298	1.31	.76

323 *Statement of average receipts per ton per mile, etc., of various railroads.*

Name of road.	1892.		1893.		Average receipts per ton per mile.		
	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.	1894.	1895.	1896.
I.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1. Louisville & Nashville R. R	.948	.621	.917	.614	.876	.831	.86
2. Nashville, Chattanooga & St. Louis Ry.	1.035	.599	1.067	.610	1.043	.920	.92
3. Cincinnati, New Orleans & Texas Pac. Ry	.779	.571	.745	.576	.757	.724	.72
II.							
1. Pennsylvania R. R	.647	.448	.620	.447	.606	.565	.56
2. New York, New Haven & Hartford R. R.	1.747	1.425	1.867	1.477	1.864	1.658	1.70
3. Pittsburg, Cincinnati, Chi. & St. L. Ry	.706	.551	.709	.557	.674	.602	.67
4. Fitchburg R. R	.925	.712	.923	.707	.895	.878	.86
5. West Shore R. R. (1)							
6. Lake Shore & Michigan Southern Ry	.602	.416	.599	.421	.587	.567	.59
7. Clev., Cin., Chi. & St. L. Ry	.710	.481	.701	.501	.649	.651	.63
8. New York, Chicago & St. Louis R. R.	.537	.438	.545	.443	.534	.533	.51
9. New York Central & Hudson River R. R	.690	.518	.701	.514	.733	.726	.69
10. Cumberland Valley R. R	1.285	1.058	1.206	.931	1.151	1.148	1.15
11. New York, Philadelphia & Norfolk R. R.	1.094	.885	1.057	.843	1.067	1.021	.97
III.							
1. East Tennessee, Virginia & Georgia Ry. (2)	.874	.675	.855	.597	.820	.594	.....
2. Norfolk & Western R. R	.545	.362	.516	.359	.472	.446	.44
3. Richmond & Danville R. R. (3)	1.355	.929	1.211	.933	1.128	.....	.....
4. Western & Atlantic R. R. (4)							
5. Central Railroad & Banking Co. of Ga. (5)	1.356	(6) .972	1.246	.963	1.279	1.183	1.19
6. Georgia Railroad & Banking Co. (7)							
7. Atlanta & West Point R. R	1.630	.931	1.631	1.037	1.743	1.726	1.65
8. Southern Ry. of Alabama						1.047	1.09
9. Western Ry. of Alabama	1.690	1.077	1.674	1.057	1.701	1.586	1.56

324 1. Financial report filed. Operations included in those of New York Cent. & Hud. Riv. R. R.

2. Report for 1892 covers period July 1 to June 24. Report for 1893 covers period June 25, 1892, to June 30, 1893. Report for 1895 for month ending July 31, 1894. Merged in Southern Ry. Aug. 1, 1894.

3. Reorganized as Southern Ry. June 18, 1894.

4. No report filed. Operations included in those of Nashv., Chat. & St. L. Ry.

5. Report for 1892 covers period Jan. 1 to March 4. Report for 1895 covers four months ending Oct. 31.

6. As figured by this office. No computation made by road.

7. Financial report filed. Operations included in those of Georgia R. R.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the above is a true and accurate statement

from the reports of the carriers named therein for the years 1892 to 1896, inclusive, made to and on file with the Interstate Commerce Commission.

This the 20th day of October, 1897.

EDW. A. MOSELEY,
Secretary.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF STATISTICS,
October 20, 1897.

Filing: Filed in clerk's office Oct. 27, 1897. O. C. Fuller, clerk.

325 *Opinion by Hon. Wm. T. Newman.*

In the circuit court of the United States for the northern district of Georgia.

In equity. At Atlanta.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al. — Rule No. 524.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad & Banking Company, et al. — Rule No. 525.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company, et al. — Rule No. 526.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

ED. BAXTER,
Solicitor for Defendants, as of record.

NEWMAN, district judge:

On the 16th day of October, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of Georgia, filed with the Interstate Commerce Commission a petition setting up a violation on the part of the above-named defendants of section 4 of the act of Congress entitled "An act to regulate commerce."

The petition, after setting out that the defendants are common carriers engaged in transporting goods from Cincinnati, O., to points in Georgia, and therefore subject to the act to regulate commerce, complains that the rates charged on freight from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, local stations on the line of the Western & Atlantic Railroad, in Georgia, are greater than the rates charged to Atlanta, the eastern terminus of the Western & Atlantic Railroad, and a longer distance point. It was alleged that the transportation to Atlanta and to the local

stations named was under substantially similar circumstances and conditions. The petition further stated that Marietta is 20 miles west of Atlanta and 118 miles east of Chattanooga, that Acworth
326 is 35 miles west of Atlanta and 103 miles east of Chattanooga, that Cartersville is 48 miles west of Atlanta and 90 miles east of Chattanooga, that Kingston is 59 miles west of Atlanta and 79 miles east of Chattanooga, that Adairsville is 69 miles west of Atlanta and 69 miles east of Chattanooga, and that Calhoun is 78 miles west of Atlanta and 60 miles east of Chattanooga; that the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of Cincinnati and other Ohio River points to the towns and stations above-named were more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of Cincinnati; that, therefore, the rates are unreasonable and discriminating in their nature; that they have called the attention of the officials of the Western & Atlantic Railroad Company to the fact, and that they have refused and declined to change the same.

The prayer of the petition is as follows: "Whereupon petitioners, as the railroad commission of the State of Georgia come and present the facts as aforesaid, and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia and to the different towns and stations on the Western & Atlantic Railroad, so made, charged, and collected by the carriers as aforesaid, is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled 'An act to regulate commerce.'"

Answers were filed by the defendants, in which substantially they denied that the transportation to Atlanta and the other points named was under substantially similar circumstances and conditions, or that the rates were unjust and discriminating.

After hearing the parties, the Interstate Commerce Commission, on November 11, 1892, filed its report and opinion, and made an order in which it required the railroad companies to desist from the acts complained of in the petition of the Georgia railroad commission.

On the 27th day of May, 1893, the Interstate Commerce Commission filed its bill in this court, alleging that the defendant railroad companies had refused and still refuse to comply with the orders so made by it, asking that said order be enforced and that the defendant railroad companies be enjoined in accordance with its decision and order.

The particular act, therefore, which it is claimed constitutes a
327 violation of section 4 of the act to regulate commerce is the charging and receiving greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for a shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, in the State of Georgia, than for a longer distance over the same line in the same direction to Atlanta, also in the State of Georgia, the shorter being included within the longer distance. The claim, of course, is, and the conclusion of the commission was, that freight carried from Cincinnati, etc., to Atlanta, is carried under substantially similar circumstances and

conditions as freight carried to the shorter distance points named; and this violation of section 4 has been the only question raised prior to this hearing, as shown by the record. If the circumstances and conditions at Atlanta are substantially similar to those at Marietta and the other shorter distance points named, it is conceded to be a violation of section 4 of the act to regulate commerce; if the circumstances and conditions at Atlanta are substantially dissimilar, within the meaning of the act, to those at the shorter distance points, then it is conceded that the fourth section is not violated. As bearing upon this question, and, indeed, as determining it, the question discussed in this case, as in several other cases, has been whether or not competition with other carriers subject to the act to regulate commerce, at longer distance points, is sufficient to make the carriage to such points under dissimilar circumstances and conditions.

The record in this case show that the rate on first-class goods per 100 pounds, in 1892, and at prees'nt, are as follows: From Cincinnati to Chattanooga, 76 cents; to Calhoun, $1.09; to Adairsville, $1.12; to Kingston, $1.15; to Cartersville, $1.18; to Acworth, $1.24; to Marietta, $1.27; and to Atlanta, $1.07. The rate to the six local points named is made up of the through competitive rate to Chattanooga, Tenn., within the local rate authorized by the Georgia railroad commission from Chattanooga to the points named added. The plan of rate making in Georgia to local noncompetitive stations is to add to the through competitive rate the local rate authorized by the Georgia railroad commission; and when made in this way, the above rate are the result.

After the case was at issue in this court, evidence was taken both for the commission and the railway companies. The evidence for the commission was that of merchants at the local stations on the Western & Atlantic Railroad. Their evidence tended to show that
328 they were put at a disadvantage at their respective places of business by reason of the lower rate to Atlanta, and that injury had resulted to business at these points by reason of the Atlanta rate. The evidence for the railway companies was taken for the purpose of showing, and tends to show, that the rate to Atlanta is the result of active competition; also that the rates to the local stations named on the Western & Atlantic Railroad were just and reasonable rates in and of themselves; also that a lower rate to the local stations would not materially affect the amount of goods carried to those stations or the volume of business transacted. The testimony is of considerable length, and no attempt will be made to quote from the evidence for either side, except from the testimony of one witness, out of a number, as to competition existing at Atlanta. Mr. J. M. Culp, the general traffic manager of the Southern Railway, was a witness for the defendants, and the following extract is taken from his testimony, by questions and answers:

"Q. State whether the rates or freight from Ohio River points to Atlanta are controlled by any, and if so, to what, extent by competition."

"A. They are entirely controlled by competition. They are controlled by competition between the railroads themselves, the railroads leading from the Ohio River themselves, and controlled by competition from the eastern seaboard. The adjustment of rates on certain of the classes is based upon the same rates from Cincinnati to Atlanta as from Baltimore

to Atlanta. This is not true of all classes, but it is true of a number of classes."

"Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as exists at Atlanta, Ga."

"A. There is not the same competition. There is competition existing up to Chattanooga—strong competition—and the rates fixed by that competition are used in making rates to these local stations. As I have before testified, to these competitive rates up to Chattanooga are added the rates which are the same for the same distance as the rates of the Georgia commission."

While the testimony varies somewhat, the above is in line with the testimony of all the witnesses for the defendant who testified on the subject.

The present case was heard and decided by the Interstate Com-
329 merce Commission in 1892. At that time there had been no authoritative determination of the question as to whether or not competition at a longer-distance point would render the carriage of freight to such point under substantially dissimilar circumstances and conditions from those existing at a shorter-distance point within the meaning of the fourth section of the act to regulate commerce. Since that time several cases have been before the Supreme Court and the question thoroughly discussed. It appears to be now finally settled by the decision of the Supreme Court in the case of The Interstate Commerce Commission vs. Alabama Midland Railway Company, 168 U. S., 144. In that case the substance of the decision by the Supreme Court may be gathered from a headnote as follows:

"Competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce. This is no longer an open question in this court."

In the case of The Savannah Bureau of Freight and Transportation vs. Charleston & Savannah Ry. Co., 7 I. C. Reports, 479, the Interstate Commerce Commission, speaking of this decision in the Alabama Midland case, used the following language:

"The Commission has uniformly held up to the present time that this species of competition does not create the necessary dissimilarity of circumstances and conditions under that section, and such would have been its decision in this case upon the law as it was supposed to be when the findings of fact were prepared. Since then, however, the Supreme Court of the United States, by its decision in the case Interstate Commerce Commission v. Alabama M. R. Co., decided November 8, 1897, 168 U. S., 144, ... has determined that this view of the law is erroneous, and that railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. Under this interpretation of the law as applied to the facts found in this case, we are of the opinion that the charging of the higher rate to the intermediate points, as set forth, is not obnoxious to the fourth section. The section declares that the carrier shall not make the higher charge to the nearer point

under 'substantially similar circumstances and conditions.' If the conditions and circumstances are not substantially similar, then the section does not apply and the carrier is not bound to regard it in the making of its tariffs. The court has decided that railway competition, if it exists, must be considered. If, therefore, such competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate at the intermediate point, and the higher rate is not prohibited by the fourth section."

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In the 11 Annual Report of the Interstate Commerce Commission, page 37, the Commission discussed the Alabama Midland Railway case, decided by the Supreme Court, as follows:

"It is stated in the foregoing pages that there was pending before the Supreme Court of the United States a case arising under the fourth section. . . . . Since the above was written that case has been decided adversely to the contention of the commission. It is proper, therefore, to further state the nature and bearing of that decision.

"The case is entitled 'Interstate Commerce Commission v. The Alabama Midland Railway Company and others,' and was decided November 8, 1897. The original complaint was brought by the Board of Trade of Troy, Ala., against the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections. The facts, in brief, are these: Troy, Ala., is situated upon the Alabama Midland Railway 52 miles east of Montgomery. Rates from all points in the East and Northeast are higher to Troy than to Montgomery via the Alabama Midland, although the traffic over that line passes through Troy on its way to Montgomery. Rates on cotton from Troy to eastern seaports, like Savannah, are higher than rates on cotton from Montgomery, although the Montgomery cotton passes through Troy upon its way to Savannah.

"There were other questions in the case, but these sufficiently illustrate what was decided in reference to the fourth section. Troy is reached by two railroads, the Alabama Midland and the Georgia Central, and both these lines actually compete at that point for all kinds of traffic. Montgomery is the converging point several lines of railway, which also compete for all kinds of traffic. The defendants claimed that the lower rate at Montgomery was justified and made necessary by this competition between the different lines centering there, which did not affect the rate to Troy.

"The fourth section provides that more shall not be charged for the short than for the long haul when the transportation is under 'substantially similar circumstances and conditions.' The defendants insisted that the fact of railway competition at Montgomery made the circumstances and conditions at Troy and at Montgomery dissimilar, and that, therefore, the inhibition of the fourth section did not apply. The commission had held in many previous cases, and held in this case, that railroad competition between carriers subject to the provisions of the act could not of itself create the necessary dissimilarity in circumstances and conditions. This contention is not sustained by the Supreme Court, which holds that such competition does create that dissimilarity, and that the higher rate to Troy is not prohibited by the fourth section."

331

Then, after discussing at some length the origin of this section, the views of the commission, its purposes, etc., it states (page 43):

"This language is intelligible as to the third section, but we are at a loss to understand how it can be applied to the fourth. That section enacts that the carrier shall not charge more for the short than for the long haul under substantially similar circumstances and conditions. . . . . If the circumstances and conditions are not similar the section does not apply. The court holds that railway competition of controlling force makes the circumstances dissimilar. If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point.

"The third section is still left, and under that section we may inquire whether, under all the circumstances, the rates as adjusted give an undue preference to the competitive point, but the fourth section is by this decision eliminated from the act."

In view of the foregoing statements made by the Interstate Commerce Commission in its report and in the decision of the Savannah Freight Association case, it may be reasonably assumed that the Commission itself would not now, upon the record and facts, decide in the case under consideration that the fourth section of the act was violated.

Examining the question of the existence of such competition at Atlanta as is necessary to justify the lower rate, we find that the Interstate Commerce Commission has expressed itself in this case. In its report and opinion in the present case the commission stated:

"The present adjustment of rates to Atlanta is the outcome of
332 severe competition between lines leading from competing markets, like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period."

If competition generally with other lines renders the circumstances and conditions of the haul dissimilar, severe competition would seem to make it beyond question.

As a matter of general public knowledge, Atlanta is many times as large as either of the points on the Western & Atlantic Railroad as to which complaint is made. It is also well known, and is disclosed by the evidence, that at Atlanta several different lines of railroad compete actively for business, and not only is competition active between carriers, but also between markets competing for the Atlanta business. Goods may be brought by water from New York, Philadelphia, Baltimore, and other Eastern points, by steamer to Charleston, Brunswick, and Savannah, and thence by competing lines of railway to Atlanta. From similar points in the North and East there are also competing lines of rail. From points in the middle North and the great Northwest there is competition by rail and partly by water routes. Eight lines of railroads enter Atlanta. Its commercial and manufacturing interests are large and varied. At the local points on the Western & Atlantic Railroad mentioned there is very little, if any, competition. It must be apparent at a glance that the conditions under which transportation is effected to Atlanta, and at any of the local stations, are entirely different. Assuming, therefore, what is now clearly decided, that competition may distin-

guish the circumstances, and should be considered in determining whether a given rate is obnoxious to the fourth section of the act to regulate commerce, it seems clear that the rates complained of in this case are not violative of that section.

In the case of Brewer vs. The Central of Georgia Railway Company, 84 F. R., 258, in a recent decision of Judge Speer, of the southern district of Georgia, it is held that the competition existing at Macon, Ga., is such as to distinguish the circumstances and conditions of transportation to that city from those existing at Griffin, and a construction is given the fourth section of the act in accordance with what has been hereinbefore expressed. Judge Speer, in concluding his opinion, aptly says:

"Shall government undertake the impossible but injurious task of making the commercial advantages of one place equal to those of
333 another? It might as well attempt to equalize the intellectual powers of its people. There should be no attempt to deprive a community of its natural advantages, or those legitimate rewards which flow from large investments, business industries, and competing systems of transportation to facilitate and increase commerce. The act to regulate interstate commerce has no such purpose, and yet this appears to be the inevitable result of the relief the complainants seek in this case, without any adequate corresponding advantage either to themselves or to the community in which they live."

It is said, however, that even if the rates in question here are not objectionable under the fourth section of the act, the charges made to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta are, in and of themselves, unjust and unreasonable, and as such come within the prohibition of the first section of the act referred to. That section provides that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful." It has been stated already that the charge originally made in this case, and the one to which evidence was directed, hearings had, and orders made, up to the present time, was the violation of the fourth section of the act, and that the charges made to the local stations on the Western & Atlantic Railroad relatively to the charge made at Atlanta were in violation of that section.

But there is no evidence whatever to justify a finding that the rates charged to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta are unjust and unreasonable in and of themselves. It is argued that the fact that the rate to Atlanta is said to be a reasonable and just rate by the witness for the defendant, that the rates to the other points, being higher, must be unreasonable. The witnesses speak of the rate to Atlanta as a part of a general system of rates, and a fair construction of their evidence is that they are spoken of as reasonable in connection with this general system of rate making. These witnesses testify, in response to questions of counsel for complainant, that the rate to Atlanta pays something above the cost of the service of carriage. It is doubtful as to what this expression means and as to what it includes; whether it relates simply to the cost connected immediately with the transportation

of the goods, or whether it embraces all of the cost to the railroad company, including its fixed charges, etc.; but, either way, the fact that the rate to Atlanta is reasonable does not show that the other rates are unreasonable.

334 It is said also that the fact that a part of the rate to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta is the local rate fixed by the Georgia railroad commission for local hauls shows that it is unreasonable. The rates to these points are made up of a highly competitive rate to Chattanooga with the local rate added. The testimony is that each is reasonable of itself. In the Alabama Midland case, in the circuit court of appeals (74 F. R., 723), in reply to a question of this sort raised in that case, it is said: "The rates in question, when separately considered, are not unreasonable or unjust." The facts here being similar, the conclusion should be the same.

It is further urged that this bill should be sustained upon the ground that the rates complained of violate the third section of the act in that there is an undue preference and advantage in favor of the longer distance point, and an unreasonable prejudice or disadvantage against the shorter distance point. It was said by this court, in the case of I. C. C. vs. Cincinnati, New Orleans & Texas Pacific Railway, 56 F. R., 925, as follows:

"As to the question of undue preference, under section 3 of the act to regulate commerce, it may be stated that unless the traffic involved here is obnoxious to the fourth clause of the act, it can hardly be said to be an undue preference in favor of Augusta, or an undue prejudice or disadvantage against Social Circle. In the Party Rate case (Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S., 263), the Supreme Court say: 'But so far as relates to the question of 'undue preference,' it may be presumed that Congress in adopting the language of the English act had in mind the constructions given to these words by the English courts, and intended to incorporate them into the statute * * * In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike, under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge.' So that, unless the rates complained of, as compared with each other, violate the fourth section of the act, there seems to be very little ground for claiming that they violate the 'undue preference' provision of the third section."

There might be, of course, a case of undue preference on the one hand and undue prejudice on the other in connection with a charge for a greater rate for the shorter than for the longer haul, but the evidence

335 here fails to show that there is any undue preference in favor of the longer distance point. The evidence shows that the rate to Atlanta is forced on the railroad officials by competition. There is no evidence whatever of any improper desire on the part of the officials to give Atlanta a lower rate, or the local points a higher rate. The matter is controlled by existing competitive conditions.

Counsel for the commission, in his able brief, invites the attention of the court to the fact that "violations of the long and short haul rule of section 4 are only a species of undue preference in rates between localities, and that such violations fall within the purview of the provisions of sec-

tion 3 forbidding undue preference between localities, and would have been unlawful under that section, although not specifically denounced in section 4. Congress, therefore, in making the greater charge for the shorter than the longer haul the subject of specific denunciation in a distinct section of the law, only intended to emphasize its disapprobation of that particular species of undue preference in rates between localities, and to point it out as one of the principal evils which called for remedial legislation, and which the commerce law was especially designed to remedy." But Congress, by the fourth section, intended to establish a test as to the lawfulness or unlawfulness of charges in connection with the long and short haul. Where, under the terms of the section distinctly and specifically dealing with the long and short haul question, certain rates are legal, we can not turn to another broader and more comprehensive part of the law and determine them to be illegal. If the lesser charge to the longer distance points results from dissimilar circumstances and conditions brought about by competition, it can not be said to be a preference which is undue or unreasonable.

Attention has been called by counsel for the commission to a recent decision by Judge Severens, in the circuit court for the eastern district of Tennessee, at Chattanooga, in the case of I. C. C. vs. E. T., V. & G. R. Co., 85 F. R., 107, and special stress is laid on the part of the opinion of Judge Severens, as follows:

"Now, I do not understand that such a conclusion follows from that decision. [Decision of the Supreme Court in the Alabama Midland case.] On the contrary, I suppose that when a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination whether the conditions are similar, and if dissimilarity is found, then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of. The language of the act ought not to be tied up by such literal construction. If it were, then if it should be found that the dis-
336 similarity of conditions is really in favor of the locality discriminated against, the provision would not apply,—a result contrary to the manifest intent. In other words, my opinion is that the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

This view of the law suggested by Judge Severens, it is submitted with the utmost deference, is not the view adopted by the courts, or indeed by the Interstate Commerce Commission itself. The view generally entertained is that if the circumstances and conditions at the longer distance point are substantially dissimilar from those at the shorter distance point, then the fourth section of the act is inapplicable.

In the case of the Interstate Commerce Commission v. L. & N. R. R. Co., 1 I. C. C. Reps., page 57, speaking through Judge Cooley, with reference to the phrase, "under substantially similar circumstances and conditions," in the fourth section of the act, the Commission says:

"If the circumstances and conditions of the two hauls are dissimilar, the statute is not violated."

In the 11 Annual Report, embraced in the language heretofore quoted, is the expression by the Commission:

"If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point."

The language of the Commission in the Louisville & Nashville case has been quoted with approval by Judge Ross in I. C. C. v. A. T. & S. F. R. R. Co., 50 F. R., 300, and by Judge Simonton in Behlmer v. L. & N. R. R. Co., 71 F. R., 839. Alabama Midland case, supra.

In the opinion of the circuit court of appeals for the fifth circuit, 74 F. R., 723, in the Alabama Midland case, by Circuit Judge McCormick, this occurs:

337 "Within the limits of the exercise of intelligent good faith in the conduct of their business, and subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as meet the necessities of commerce and of their own situation and relation to it, and generally, to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. The carriers are better qualified to adjust such matters than any court or board of public administration, and, within the limitations suggested, it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business."

In the same case, in the Supreme Court, this language of the circuit court of appeals is drawn in question, and in the opinion by Justice Shiras, for the Supreme Court, 168 U. S., 173, it is said:

"The last sentence in this extract is objected to by the Commission's counsel, as declaring that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carriers. If so read, we should not be ready to adopt or approve such a position. But we understand the statement, read in the connection in which it occurs, to mean only that, when once a substantial dissimilarity of circumstances and conditions has been made to appear, the carriers are, from the nature of the question, better fitted to adjust their rates to suit such dissimilarity of circumstances and conditions than courts or commissions; and when we consider the difficulty, the practical impossibility, of a court or a commission taking into view the various and continually changing facts that bear upon the question, and intelligently regulating rates and charges accordingly, the observation objected to is manifestly just. But it does not mean that the action of the carriers, in fixing and adjusting rates, in such instances is not subject to revision by the Commission and the courts, when it is charged that such action has resulted in rates unjust or unreasonable, or in unjust discriminations and preferences."

The meaning of this must be that where the circumstances and conditions at the longer distance point are substantially dissimilar, the carrier may judge of this for itself, in the first instance, and fix the rates
338 for the longer distance point without violating the fourth section

of the act, but this does not preclude the courts or the commissions from inquiring as to whether the rates to the shorter-distance points are unjust or unreasonable, or whether they constitute undue preference for or unjust prejudice against any locality.

It may be said finally that in order to constitute dissimilarity under the fourth section of the act the competition must be real, and not imaginary or trifling, and to this effect are all the decisions on the subject.

It is conceded that the second section of the act is wholly inapplicable here, in that it deals with preferences as between shippers, and not as between localities.

The conclusions reached in this case are:

1. It is shown by the evidence and by the record that competition at Atlanta is active and effective and controls in the making of the rates in controversy to Atlanta, and that there is little or no competition at any of the local points as to which complaint is made by the Georgia commission. Consequently the haul to Atlanta is not under circumstances and conditions substantially similar to those at the other localities, and therefore the fourth section of the act is not violated.

2. There is nothing whatever in the evidence or in the record from which it can be justly concluded that the rates to any of the local points named are, in and of themselves, unjust and unreasonable, in violation of the first section of the act.

3. The evidence fails to show that the rates complained of violate the third section of the act. The only complaint made, and all that the evidence shows, is that the rate to Atlanta, the longer-distance point, is less than the rate to these shorter-distance points; and as the rate to Atlanta is shown to have been brought about by and to be the results of active competition at that point, it can not be held to be a preference which is undue or unreasonable in favor of Atlanta, or to subject the local points named to any undue or unreasonable prejudice or disadvantage.

Entertaining the foregoing opinion of the case, the court must deny the injunction prayed for to restrain the continuance of the rates in question.

This June 15, 1898.

WM. T. NEWMAN, *U. S. Judge.*

Filed in clerk's office 15th day of June, 1898. O. C. Fuller, clerk, by J. D. Steward, deputy clerk.

339 *Final decree.*

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN AND ATLANTIC RAILROAD COMPANY, THE Louisville & Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, Lessee of the Cincinnati Southern Railway Company; The Cincinnati Southern Railway Company and S. M. Felton, receiver. } No. 524.

This cause came on to be heard before Hon. Wm. T. Newman, judge, etc., upon the petition or bill, the answers thereto, exhibits, the testimony, stipulations, and argument of counsel.

Whereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the matters of equity alleged in the petition or bill are fully denied in the answers and are not sustained by the proof, and therefore that the said petition or bill be dismissed and that the injunction prayed for therein be refused.

It is further ordered, adjudged, and decreed by the court that the costs of this cause shall be taxed by the clerk to be paid out of the appropriation for expenses of the courts of the United States, as provided in section 16 of the act to regulate commerce.

In open court July 6, 1898.

WM. T. NEWMAN, *U. S. Judge.*

Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

Petition for appeal and grant of appeal.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN AND ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Comes the Interstate Commerce Commission this the 6th day of July, 1898, by G. L. Bell, assistant United States attorney, and in open court applies for an appeal from the final decree therein to the United States circuit court of appeals for the fifth circuit, and the said petitioner, the Interstate Commerce Commission of the United States, being a
340 department of the Government, and this appeal being entered as such, and it appearing that the matter in dispute in said cause exceeds the sum or value of five thousand dollars, exclusive of costs, it is therefore ordered that said application for appeal be, and the same is, hereby granted and made returnable not exceeding thirty days from this date, and that the same be filed in this court.

This, the 6th day of July, 1898.

WM. T. NEWMAN,
United States Judge.

Filing: Filed in clerk's office 6' day of July, 1898. O. C. Fuller, clerk.

Assignment of errors.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Comes the Interstate Commerce Commission by Geo. L. Bell, assistant United States attorney, and by L. A. Shaver, its solicitor, and says that in the decree rendered by said circuit court in the above-entitled cause

on the 6th day of July, 1898, and in the record and proceedings in said court there is manifest er'or in this, to-wit:

1. Said court erred in decreeing that the bill or petition of the Interstate Commerce Commission be dismissed.

2. Said court erred in not granting the relief prayed for in the said bill or petition of the Interstate Commerce Commission.

3. Said court erred in not rendering a decree for the enforcement of the order of said Commission.

4. Said court erred because it decided and held that the only question raised prior to the hearing before said court was as to a violation of section four of the act to regulate commerce.

5. Said court erred because it held that there was a substantial dissimilarity of circumstances and conditions resulting from competition at the longer distance point, which justifies lower rates to such longer distance points than to the shorter distance points in this case.

341 6. Said court erred because it held that "the question discussed in this case was whether or not competition with other carriers subject to the act to regulate commerce at the longer distance point is sufficient to make the carriage to such point under dissimilar circumstances and conditions."

7. Said court erred because it held, in effect, that when once a substantial dissimilarity of circumstances and conditions resulting from competition in transportation to the longer distance point is shown the rule of the fourth section does not apply, although the rates to the shorter distance points are excessive in themselves, and although it might appear that due allowance would be made for such dissimilarity of conditions by making the rates to the shorter distance point as high as to the longer distance point.

8. Said court erred in holding "that there is no evidence whatever in this case to justify a finding that the rates charged to the shorter distance points are unjust and unreasonable in and of themselves."

9. Said court erred in holding that "the witnesses for the respondents testified in response to questions of counsel for complainant that the rate to the longer distance point pays something above the cost of the service of carriage."

10. Said court erred in ignoring the testimony of witnesses for the respondents in response to questions of counsel for complainant, that the rates to the longer distance point are reasonable "in and of themselves" and "yield the carrier a reasonable and proper re*mu*neration above the cost of the service of carriage."

11. Said court erred in holding, in effect, that the testimony showed that the local rates, established by the Georgia railroad commission and by combination with which the through rates to the shorter distance points are made, were reasonable as proportions or parts of such through rates.

12. Said court erred in holding, in effect, that local rates shown by the proof to have been fixed with a view of covering the extra expense of strictly local hauls were reasonable as proportions or parts of through rates.

13. Said court erred in holding that "if the lesser charge to the long distance point results from dissimilar circumstances and conditions

342 brought about by competition, it can not be said to be a preference

which is undue or unreasonable" under section three of the act to regulate commerce.

14. Said court erred in holding, in effect, that where the long and short haul rule of section four of the law does not apply, the provisions of section three of the law forbidding undue preferences in rates as between localities can not apply.

15. Said court erred in holding, in effect, that where a substantially dissimilarity of circumstances and conditions resulting from competition is shown, the amount of the discrimination justified by such dissimilarity of conditions is to be left to the determination of the carrier.

16. Said court erred in holding that "the evidence fails to show that the rates complained of violate the third section of the act to regulate commerce."

17. Said court erred in holding "that there is little or no competition at any of the local points" (short-distance points in this case), the rates to which are involved in this case.

18. Said court erred in holding, in effect, that the only testimony in this case for the complainant was testimony of merchants at the shorter distance points and in ignoring the testimony of the Hon. Allen Fort, a member of the Georgia railroad commission, and of Jesse M. Smith, auditor of the Interstate Commerce Commission.

GEO. L. BELL,
Ass't. U. S. Dist. Atty.
L. A. SHAVER,
Solicitor for Interstate Commerce Commission.

Filing: Filed in clerk's office 6th day of July, 1898. O. C. Fuller, clerk.

343 *Citation.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION,
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

To the Western & Atlantic Railroad Company; The Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway Company; The Cincinnati Southern Railway Company and S. M. Felton, receiver:

You are hereby cited and admonished to be and appear at the court room of the United States circuit court of appeals, for the fifth circuit at New Orleans, Louisiana, on the 6th day of August, 1898, pursuant to an appeal allowed and granted by the circuit court of the United States for the northern district of Georgia, at Atlanta, in the above-entitled case, to show cause, if any there be, why the decree of said circuit court of the United States for the northern district of Georgia, at Atlanta, rendered on the 6th day of July, 1898, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Wm. T. Newman, United States district judge for the northern district of Georgia, this the 6th day of July in the year of our Lord one thousand eight hundred and ninety-eight (1898).

WM. T. NEWMAN,
U. S. Judge.

Service: Service of the above citation is hereby accepted and copy waived this the 24th day of July, 1898.

ED. BAXTER,
Solr. for Defendants, as of record.

U. S. circuit court. Filed in clerk's office July 6, 1898. O. C. Fuller, clerk.

344 UNITED STATES OF AMERICA,
Northern District of Georgia:

I, Olin C. Fuller, clerk of the circuit court of the United States of America for the northern district of Georgia, in the fifth circuit, do hereby certify that the foregoing pages, numbered from 1 to 644, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of the Interstate Commerce Commission against the Western and Atlantic Railroad Company, the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railway Company, the Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, the Cincinnati Southern Railway Company, and S. M. Felton, receiver, as the same remains of record and on file in my office.

In testimony whereof, I have caused the seal of said court to be affixed, at the city of Atlanta, in the northern district of Georgia, in the fifth circuit, this 28th day of July, in the year of our Lord one thousand eight hundred and ninety-eight and of the independence of the United States the one hundred and twenty-second.

[SEAL.] OLIN C. FULLER, *Clerk.*

344a United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

MONDAY, *December 19th, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE Louisville & Nashville Railroad Co., et al's., appellees. } No. 750.

This cause was regularly called this day, and was argued by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees, when the further hearing was postponed until to-morrow.

November term, 1898.

[Extract from minutes.]

TUESDAY, *December 20, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als., appellees. } No. 750.

This cause came on again to be heard this day, and was submitted to the court after further argument by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees.

345 November term, 1898.

[Extract from minutes.]

MARCH 21, 1899.

Decree.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als. } No. 750.

This cause come on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed that the decree of the said circuit court in this cause be, and the same is hereby, affirmed at the costs of the appellant.

346 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als., appellees. } No. 750.

Petition for appeals.—Filed April 12, 1899.

The Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said Commission, under the direction of the Attorney-General of the United States, represents that in the final decree of said circuit court of appeals, rendered on the 21st day of March, 1899, there is manifest error to its injury; and therefore, being a department of the Government of the United States, it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

J. WARD GURLEY,
United States Attorney for the Eastern District of Louisiana.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

347 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, appellant,
vs.
THE WESTERN & ATLANTIC RAILROAD Co., The Louisville & Nashville Railroad Company, et als.
In equity, No. 750.

Assignment of errors.—Filed April 12, 1899.

And now comes the Interstate Commerce Commission, by J. Ward Gurley, United States attorney for the eastern district of Louisiana, and L. A. Shaver, esq., solicitor of said commission under the direction of the Attorney-General of the United States, and charges that in the decree rendered by said circuit court of appeals in the above-entitled cause on the 21st day of March, 1899, and in the record and proceedings in said court, there is manifest error to its injury in this, to wit:

1. Said circuit court of appeals erred in affirming the decree in said cause of the circuit court of the United States for the northern district of Georgia, dismissing the bill of complaint of the Interstate Commerce Commission.

2. Said circuit court of appeals erred in not reversing the decree in said cause of the circuit court of the United States for the northern district of Georgia.

3. Said circuit court of appeals erred in not rendering a decree for the enforcement of the entire order of the Interstate Commerce Commission involved in said cause.

4. Said circuit court of appeals erred in not rendering a
348 decree for the enforcement of the order of said Commission as to each of the shorter distance points, the rates to which were involved in said cause.

5. Said circuit court of appeals erred in holding that "the Commission was not" (in the proceedings before it) "called upon to find whether the respective rates in question were reasonable and just or not."

6. Said circuit court of appeals erred in holding that the commission, in the proceedings before it, "was not called upon to find whether the rates charged to the shorter distance points gave an undue or unreasonable preference or advantage to the longer distance points, or subjected the shorter distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever."

7. Said circuit court of appeals erred in holding in effect "that on applications like this, the courts are limited to a review of the grounds on which the commission acted and have not and should not exercise jurisdiction on the whole subject-matter and on the law and facts determine whether the tariff of rates complained of is just and reasonable, and whether it gives any undue or unreasonable preference to the longer distance points, or subjects the shorter distance points to any undue or unreasonable prejudice or disadvantage."

8. Said circuit court of appeals erred in holding in effect that rates established by agreement between competing carriers are the result of or fixed by competition, and not the result of or fixed by such agreement.

9. Said circuit court of appeals erred in holding that "a careful construction of the circumstances and conditions shown by the proof constrains to the conclusion that the difference in the circumstances and conditions has caused the difference that is complained of in the rates."

349 10. Said circuit court of appeals erred in holding that the dissimilarity of conditions resulting from competition at the longer distance points is so great as to justify the discrimination in rates complained of against the shorter distance points, which are "junction points reached by more than one railroad."

11. Said circuit court of appeals erred in holding that "the most careful consideration of the testimony brought up in the records in these causes does not disclose any evidence that was offered by the appellant in the circuit court tending to show that the rates, separately considered, to the respective points are not reasonable and just."

12. Said circuit court of appeals erred in holding that "the great volume of testimony given by the witnesses for the appellees is directly and clearly to the effect that the rates are reasonable and just."

13. Said circuit court of appeals erred in holding that the fact as to whether or not rates are reasonable and just "is hardly susceptible of better proof than the opinions of 'railroad officials.'"

14. Said circuit court of appeals erred in holding that the fact that rail rates are lower "than can be obtained by any other means of transportation" is evidence of their reasonableness.

15. Said circuit court of appeals erred in holding that the facts that the rates in question "have not prevented the shipment of freights," and "traffic has been shipped under them with profit," are evidence of the reasonableness of such rates.

16. Said circuit court of appeals erred in holding that the fact that the rates to the shorter distance points are made up of (or based upon) the competitive rates to competitive points, and the local rates from such

350 competitive points to the shorter distance points is evidence of the reasonableness of the entire through rates to the latter points.

17. Said circuit court of appeals erred in holding in effect that rates to the longer distance competitive points which are not "fully remunerative have a tendency to reduce local rates and to improve the local service."

18. Said circuit court of appeals erred in holding that carriers have a right, on the ground of competition, to charge to competitive points rates which do not yield "a full measure of reasonable remuneration."

19. Said circuit court of appeals erred in holding that the appellant did not contend in said court that "the rates to any of the points, considered separately, are too high or too low, or are not reasonable and just."

20. Said circuit court of appeals erred in holding in effect that because the order of the commission "can not adequately meet the requirements of the first and third sections," it should not be enforced to the extent it does afford relief under those sections.

21. Said circuit court of appeals erred in holding in effect that the order of the commission should not be enforced, because under it the appellees may still, if they see proper, discriminate against the shorter distance points in favor of the longer distance point, to the extent of giving the former as high rates as the latter, inasmuch as the order of the

commission only requires the appellees to desist from charging higher rates to the former that to the latter.

J. WARD GURLEY,
U. S. Attorney for the Eastern District of Louisiana.
L. A. SHAVER,
Solicitor for Interstate Commerce Commission.

351 United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

APRIL 12, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellant,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., The Louisville & Nashville Railroad Company, et als.
No. 750.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said commission, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 21st day of March, 1899, to the Supreme Court of the United States, and the said Interstate Commerce Commission, being a department of the Government, and it appearing that the matter in dispute in said cause exceeds the sum of $5,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 12th day of May, 1899.

DON A. PARDEE,
Circuit Judge.

APRIL 12th, 1899.

352 United States circuit court of appeals, fifth circuit.

November term, 1898.—Filed March 21, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
THE WESTERN AND ATLANTIC RAILROAD Company et al., appellees. } No. 750.

SAME
v.
THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad, et als. } No. 751.

SAME
v.
THE CLYDE STEAMSHIP COMPANY, THE Atlantic & West Point Railroad Company, and The Western Railway of Alabama, et als. } No. 752.

Appeals from the circuit court of the United States for the northern district of Georgia.

Before Pardee and McCormick, circuit judges, and Parlange, district judge.

McCORMICK, circuit judge, delivered the opinion of the court.

The three above-styled causes present substantially similar questions of fact and questions of law. They were heard together in the circuit court and in this court. They were severally originated by petitions filed before the Interstate Commerce Commission against the respective appellees by the railroad commission of Georgia. These petitions were filed on October 22, 1891.

The gravamen of the petition in the first named of the above cases was that the appellees charged, collected, and received for freight transportation, by continuous carriage, from the city of Cincinnati
353 and other Ohio River points to the towns and stations of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, on the Western and Atlantic Railroad, a greater amount than the amount charged and received for freight carried through the towns and stations just named to the city of Atlanta; that the rate of freight charged to the shorter-distance points is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled "An act to regulate commerce," and prays that the defendants therein (appellees here) may be required to answer, and after due hearing and investigation an order may be made commanding them to cease and desist from the violations of the act to regulate commerce.

In the second suit, the same charges and prayer are made as to the rates of the defendants (appellees) from New York and other Eastern cities to points on the Georgia Railroad between Augusta and Atlanta, to wit: Greensboro, Madison, Social Circle, Covington, and Stone Mountain,

being the shorter distance points in that case, and Atlanta the longer distance point.

In the third complaint, the same charges and prayer are made as to the rates of the defendants (appellees) from New York and other Eastern cities to points on the Atlantic and West Point Railroad and the Western Railway of Alabama, between Atlanta and Opelika, to wit: Newnan, Grantsville, Hogansville, La Grange, and West Point, being the shorter distance points in that case, and Opelika the longer distance point.

The Interstate Commerce Commission, after due service of these complaints on the defendants therein, and after testimony taken and argument had in behalf of all parties in interest, made its report and decision November 11, 1892, in which it held in substance in each of the cases that all of the carriers, as presented in the case, are subject to the
354 act to regulate commerce, and to the jurisdiction of the Interstate Commerce Commission as to through shipments from Cincinnati, New York, Philadelphia, Boston, and Baltimore; or from any Ohio River or Mississippi River point, or any Atlantic port north of Charleston, and that they had no right to put in the higher rate for the shorter distance, upon their own motion, but should have made application to the Commission for relief under the provisory clause of the fourth section; and are technically not now entitled to make defence to the complaints. After discussing the facts in the first case, the Commission says: "In view of these facts, and others shown in the statement of findings, we hold that the defendants are not, upon the evidence, justified in making the greater charges complained of in this case. But this being the first case since the Louisville & Nashville decision in which the Commission has been called upon to specifically hold that relieving orders must be applied for in this class of cases, we think the carriers should have an opportunity in this case of applying for relief under the proviso of the fourth section, and, if possible, of bringing forward voluntarily, as applicants instead of defendants, additional evidence that may be admissible under such a proceedings as indicated in this opinion. The order will therefore be that the defendants in this case cease and desist, within 20 days after receiving a copy thereof, from charging or receiving any greater compensation in the aggregate for transportation of a like kind of property from Cincinnati or other points called and known as Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta than for the longer distance over the same line in the same direction to Atlanta, the shorter distance being included within the longer distance, or that the defendants make and file with the Commission within the time above specified an application or applications, as the case may require, as provided in the proviso of the fourth section of the
355 act to regulate commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio River points to the shorter distance points above mentioned than for such transportation over the same line in the same direction for the longer distance to Atlanta, and show cause within 60 days after service of the order why such application for relief should not be granted; and upon such application the evidence already taken in this case may be used.

In case the application for relief shall be denied the order to cease and desist shall stand, and compliance therewith will be required within twenty days after service of the order denying the application." A substantially similar finding and order was made in each of the two other cases.

The appellees did not apply for relief as permitted by the order, and did not change their tariff or rates to the shorter or longer distance points named.

On May 27, 1893, the bills in these cases were exhibited in the circuit court for the northern district of Georgia, and by appropriate averments therein, the proceedings had before the Commission and its decision and order therein, and the failure of the appellees to comply therewith, were presented to the court, and prayer was made that such action and orders be taken as was necessary to secure a speedy hearing and determination of the matters and things stated, and that pending the proceedings a writ of injunction or other proper process, mandatory or otherwise, to restrain the defendants, their officers, servants, and attorneys from further continuing in their violation of and disobedience to the orders of the Commission, be granted, and that upon final hearing such injunction may be made perpetual.

The cases did not come to a speedy hearing. On July 6, 1898,
356 a decree was entered in each case by which the relief sought was refused and the bill dismissed. From those decrees these appeals are taken.

It is manifest from the report and opinion of the Interstate Commerce Commission that these cases were considered and decided by it as cases presenting violations of the fourth section of the act to regulate commerce. The Commission was not therefore called upon to find whether the respective rates in question were reasonable and just or not. For the same reason it was not called upon to find whether the rates charged to the shorter-distance points gave an undue or unreasonable preference or advantage to the longer-distance points, or subjected the shorter-distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever. As underlying the provisions of the fourth section, the relative effect of the respective rates is more or less discussed in the report and opinion of the Commission, but it does not appear to have made, nor to have intended to be understood as making, any finding of fact in reference to these rates that would affect their relations to any section of the act to regulate commerce other than the fourth section, on which its opinion and decision proceeds and rests. Without conceding this, counsel for the appellant contended in the circuit court, and contends in this court, that on applications like these the courts are not limited to a review of the grounds on which the Commission acted, but have and should exercise jurisdiction of the whole subject-matter, and on the law and facts determine whether the tariff of rates complained of is reasonable and just or not, and whether it gives any undue or unreasonable preference to the longer-distance points, or subjects the shorter-distance points to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The appellees contend that their tariff of rates complained of does not violate the fourth section, because the circumstances

and conditions under which they carry freight to the shorter-dis-
357 tance points and to the longer-distance points are not substantially similar, but are substantially dissimilar. They contend further that their tariff of rates does not violate the third section for substantially the same reason as exempted them from the operation of the fourth section, and that any preference the tariff gives to the longer-distance points, or prejudice or disadvantage in any respect whatsoever to which it subjects the shorter distance points, is not undue or unreasonable, but the just and reasonable result of the substantial dissimilarity in conditions and circumstances under which the freight is carried and delivered to the different points, respectively. They also deny that the rates complained of are unreasonable or unjust, and insist that they are in themselves reasonable and just.

In the case of the Interstate Commerce Commission v. Alabama Midland Railway, 168 U. S., 144, the Supreme Court say: "That competition is one of the most obvious and effective circumstances that make the conditions under which a long and a short haul is performed substantially dissimilar—and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce—has been held by many of the circuit courts. It is sufficient to cite a few of the number: Ex parte Koehler, 31 Fed. Rep., 315; Missouri Pac. Ry. Co., Texas and Pacific Railway, 31 Fed. Rep., 862; Interstate Commerce Commission v. Atchison, Topeka, etc., Railroad, 50 Fed. Rep., 295; Same v. New Orleans and Texas Pacific Railroad, 56 Fed. Rep., 925; Behlmer v. Louisville & Nashville Railroad, 71 Fed. Rep., 835; Interstate Commerce Commission v. Louisville & Nashville Railroad, 73 Fed. Rep., 509. But the question whether competition as affecting rates is an element for the Commission and the courts to consider in applying the provisions of the act to regulate commerce is not an open question in this court.

358 "To prevent misapprehension it should be stated that the conclusion to which we are led by these cases, that in applying the provisions of the third and fourth sections of the act, which makes it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the second section of the act.

"In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of undue or unreasonable preference or advantage, or what are substantially similar circumstances and conditions.

"We are unable to suppose that Congress intended by the fourth section and the proviso thereto to forbid common carriers, in cases where the

circumstances and conditions are substantially dissimilar, from making different rates until and unless the Commission shall authorize them so to do; much less do we think that it was the intention of Congress that the decision of the Commission, if applied to, could not be reviewed by the courts."

The commissioners' report says that the present adjustment of
359 rates to Atlanta is the outcome of severe competition between the lines leading from the competing markets like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. While it makes no similar finding with reference to Opelika, showing whether or not the adjustment of rates to that point is the outcome of severe competition either between carrier and carrier or between market and market, its recitals of what the proof shows as to conditions there are to that effect, and the testimony of numerous credible witnesses is clear and pointed to the effect that the adjustment of rates to Opelika is the outcome of controlling competition. It is true that with reference to both points the force of this competition has been recognized by the respective appellees, and its influence has, by agreement between them, been so adjusted as to fix the rates to each of these points; but witnesses showing th'rough competency to testify to the fact state this adjustment of the rates has been brought about and is maintained by the force of the competition bearing upon those points. It is argued by counsel for the appellant that by this agreement as to the rates the carriers have contracted to not compete. But it is not shown or reasonably suggested on what ground or for what consideration the competing carriers consented to accept the lower rate to these longer distance points than they charge to the shorter distance points if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points.

A careful consideration of the circumstances and conditions shown by the proof constrains to the conclusion that the difference in the circumstances and conditions have caused the difference that is complained of in the rates. The commission, in its report, says: "Competition has not forced rates down at Kingston, Marietta, and Cartersville."
360 These are junction points, reached by more than one railroad. No railroad other than the Western and Atlantic runs to Calhoun, Adairsville, or Acworth. Some of the shorter distance points between Augusta and Atlanta, and between Atlanta and Opelika, have more than one railroad reaching them, but the proof shows that at none of them is there such competition as affects rates; or, to use the language of the commission, "as has forced rates down."

In these cases the circuit court found that the rates complained of do not violate the fourth section of the act to regulate commerce; that the lesser charge to the longer distance point results from dissimilar circumstances and conditions brought about by competition, and does not give a preference which is undue and unreasonable to the longer distance point, and that there is nothing whatever in the evidence or in the record from which it can be justly concluded that the rates to any of the local points named are not reasonable and just. (88 Fed. Rep., 186.)

The most careful consideration of the testimony brought up in the

records in these cases does not disclose any evidence that was offered by the appellant in the circuit court tending to show that the rates, separately considered, to the respective points are not reasonable and just, and the replies that were drawn by a most skillful cross-examination from the witnesses called by the appellees do not show or tend to show that the rates to the respective points are not reasonable and just. On the contrary the great volume of testimony given by these witnesses (who show full competency to testify) is directly and clearly to the effect that the rates are reasonable and just. One witness gives as a reason for this opinion (for the subject is hardly susceptible of better proof than the opinion of experts) that the rates
361 are fixed upon the lowest obtainable combination of the rates to competitive points with the local rates therefrom to the noncompetitive points, so that the traffic to the noncompetitive stations has the benefit of whatever reduction competition has effected in the adjustment of rates to the competitive points; and that the rates are lower than prevail in some of the other sections of the country, and lower than can be obtained by any other means of transportation, and are not higher than are charged from other points of distribution to stations on other railroads under similar circumstances and conditions. And another witness says the rates are "just and reasonable, in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freights. Traffic has been shipped with profit under these rates. They are just, relative to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition, and added to the rates from Chattanooga to the several stations, which are the same for the same distance as the rates fixed by the railroad commission of Georgia." These reasons do not convince the counsel for the appellant, but appear to us to have weight. The testimony also shows (and it has become largely a matter of common knowledge) that competition between carriers, whether by rail or water, not only affects the rate for which freight can be carried, but also substantially affects the circumstances and conditions under which the transportation of freight is conducted. By way of illustration, one witness says it will and does require a road to run trains at a high rate of speed. It requires the carrier frequently to have cars loaded at a less weight per car.
362 It often requires the carrier to take a part of a carload without waiting to fill up the car. It will frequently require the road to be less rigid in resisting the payment of claims made against it, the payment of which the company might successfully resist, and would stoutly contest, at a noncompetitive point. The doing of all these things, and many more like them not necessary to be done in the absence of competition, is rendered necessary by the presence of such competition to the degree in which it is present, in order that the carrier may get its share of the business at the competitive point. The testimony shows that the rates of freight from Ohio River points to Atlanta are entirely controlled by competition. The points between Chattanooga and Atlanta get the benefit of the strong competition at Chattanooga, but there is not at those points the same force of competition which controls the rates at Atlanta.

The testimony of the witnesses and the report of the commission show that Opelika is not situated on any water course, and is at the intersection of only two railways, but that it is affected by certain conditions which happen to exist at that point, and which are not to be found at ordinary local stations or even at ordinary junctions. With its two railroads as terminal carriers it is connected at comparative short distances with numerous and extensive systems of rail and water carriage, which make it possible for freight to reach Opelika from the Northern and Eastern ports, and from Ohio River points, by many different routes, the strong competition between which different carriers comes to a focus at Opelika. Counsel for the appellees conceded that in taking into consideration competition as one of the circumstances and conditions affecting transportation, care must be had to keep within reasonable limits. He submits that, in these cases, the reasonable limits are three: (1) that
363 the rates charged to the shorter distance points must not be unjust or unreasonable within the purview of the first section of the act to regulate commerce; (2) that the competition at the longer distance points must be such as subserves the public interest; it must also be real, and such as to compel the acceptance by the carriers of the rates which they do accept to those points; and (3) that the rates to the longer distance points must yield a profit (though it may be very small) over the additional cost of the movement of the competitive traffic. He contends that, if the rates to the shorter distance points are just and reasonable, the appellees ought not to be required to reduce them, even though such reduction may be necessary to place the shorter distance points upon a "rate equality" with the longer distance points, because such a reduction in rates to the shorter distance points involves a serious reduction in the revenue which the appellees derive from the present rates to those points. If the competition at the longer distance points is real and such as to affect rates, the carrier must accept those rates or abandon the competitive traffic. If the competitive rates are something more than the additional cost of the movement of the traffic it is to the interest of the carrier and to the interest of the public that the carrier should be allowed to compete for the traffic. The profit, however small, to the extent that it inures, increases the revenues of the carrier, and has a tendency to reduce local rates and to improve the local service. There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying the competitive traffic and that remuneration therefor which the competitive conditions will allow the carrier to receive. The full measure of reasonable remuneration to the appellees for the carriage of competitive freight to Atlanta would require a rate sufficient to pay not only the additional cost of moving the competitive traffic, but also that proportion of operating expenses, fixed charges, and reasonable profit to the owners of the carrier lines which the tonnage of the competitive traffic bears to the total freight ton-
364 nage of the carrier. And that rate would, doubtless, be applied and enforced if the circumstances and conditions permitted it to be done. But as no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances and conditions, it is manifest that it can not be applied to traffic that is subject to severe competitive conditions.

There is in these cases no complaint by the appellant, or by any of the witnesses whom the appellant called, that the rates to Atlanta, Opelika, Chattanooga, Augusta, and other competitive points are too low. There is a suggestion by the Commission, that the average of the rate per ton per mile tends to show that such complaint could not well be made, and that these rates are at least reasonably high. And the testimony offered by the appellees shows that, considering the competitive conditions in operation at those points, the rates to those points are reasonably remunerative. On the basis of this evidence it is earnestly contended by counsel for the appellant that the rates at the longer distance points being shown to be reasonably remunerative, and the rates at the shorter distance points being admitted to be higher, the latter must, of logical necessity, be found to be unreasonably high, and therefore unreasonable and unjust, and such as give an undue preference to the longer distance points, and subject the shorter distance points to an undue and unreasonable prejudice and disadvantage. It will be perceived that this argument excludes all consideration of the force of competition, and ignores its presence at the longer distance points and its comparative absence from the shorter distance points. What is a reasonable action, or a reasonably remunerative rate for carrying at a given time and place, necessarily has relation to the circumstances and conditions bearing upon the actor or upon the carrier at the time and place. The appellant does not say—and the railroad commission of Georgia did not say, and none of the witnesses called by the appellant in the cases have said—that the rates at any of the points, considered separately, are too high or are too low, or are not reasonable and just. The burden of their complaint is that the relation between the rates is wrong. It is not insisted or even suggested
365 that the rates to the longer distance points should or can be raised.

Nor is it now asked that the rates to the shorter distance points shall be lowered. It is asked only that the appellees shall be required to cease and desist from charging more for the shorter than for the longer haul. This requirement seems to have possible relation only to the fourth section of the act. It can not adequately meet the requirements of the first and third sections if either of them is violated by the conduct from which the appellees are required "to cease and desist." If the mere charging of a greater rate for the shorter than for the longer haul gives an undue and unjust preference to the longer distance points and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul that is charged for the longer shall escape condemnation.

The appellees are held to be subject to the act and to the jurisdiction of the commission, because by express or implied agreement they have consented to carry freight on through bills of lading from points beyond the State of Georgia to points within that State. The sixth section of the act to regulate commerce, as originally passed and as since amended, recognizes the existence and validity of such contracts or agreements, express or implied, and makes certain provisions with reference to the action of the connecting carriers parties thereto. The act does not, however, require such connecting carriers to enter into such agreements. Nor does it authorize the commission to require through routing and billing, or to establish and fix through rates over connecting lines. (Gulf, &c.,

Railway Company v. Miama Steamship Company, 52 U. S. App., 732; New York, New Haven and Hartford Railroad Company v. Platt, 7 Interstate Com. Rep., 323.) It does not authorize the commission to fix rates in any case. (Cincinnati, New Orleans and Texas Pacific Railway Company v. Interstate Commerce Commission, 162, U. S., 184.)

The railroad commission of Georgia is authorized and required to fix rates. (Sec. 6, act 269, part 1, title 12, of Georgia, 1878-
366 1879.) And that commission has fixed a schedule of just and reasonable rates, which is called the standard tariff. Only three roads—the Western and Atlantic, the Rome Railroad (operated by the Western and Atlantic), and the Georgia Railroad—are required to observe this standard tariff of rates. All of the other roads in the State are allowed certain percentages of increase, except on classes C, D, F, J, and P, and are allowed to charge rates from ten to fifty per cent higher than the standard tariff rates. The Western and Atlantic Railroad, extending from Chattanooga to Atlanta, does not lie wholly within the State of Georgia, but being owned by the State of Georgia, and now operated by the Western and Atlantic Railroad Company under a lease from the State, is subject throughout its whole extent to the rates imposed by the Georgia commission. The competition which affects rates is at least as severe at Chattanooga as it is at Atlanta. Some of the witnesses depose that it is stronger at Chattanooga, by reason of the influence there of the Tennessee River. Various systems of connecting lines lying north and west of Chattanooga are affected by this strong competition, which has its controlling influence throughout the whole length of their lines from Ohio River points to Chattanooga on all freight carried to that point or to be carried through it; and hence they can not claim more or be forced to receive less for carriage to that point than the competitive conditions there require.

For like reasons, the Western and Atlantic Railroad Company can not obtain more for the carriage of this competitive freight from Chattanooga to Atlanta than the difference between the rates to Chattanooga and the rates to Atlanta, which have been fixed by competition beyond the control or appreciable influence of the Western and Atlantic Railroad. Therefore, as to that competitive traffic, this road has no option as to the rate at which it will take the traffic, and must either decline to receive the freight or must accept for its carriage the difference between the two rates, which are fixed by the controlling competition. As
367 to the intermediate stations on the Western and Atlantic Railroad, that carrier is under not the same duress, but feels its force to the extent that for carrying the competitive freight in question from Chattanooga to Marietta it can not charge the full rate allowed by the Georgia commission, for if it insisted on doing so the freight could and would go by another route to Atlanta; and thus, instead of getting a haul of one hundred and seventeen miles, the distance from Chattanooga to Marietta, the Western and Atlantic could get only a haul of twenty-one miles, the distance from Atlanta to Marietta.

Therefore, in fixing the rates to these intermediate points the through rate to that competitive point which, combined with the local rate from the competitive point to the point of destination, will give the lowest through rate to the noncompetitive point, controls. As the noncompeti-

tive point thus gets the benefit of the lowest rate to any of the neighboring competitive points, and as the carriage of the competitive traffic to the respective competitive points is renumerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the noncompetitive points are subject to any undue or unreasonable prejudice or disadvantage by this scheme of rate making.

Our conclusion is that the circuit court did not err in refusing to enforce the orders of the commission in these cases, and, therefore, the decrees of that court from which these appeals are taken are affirmed.

368 United States circuit court of appeals for the fifth circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 368 pages, numbered from a to 367, inclusive, contain a true copy of the record upon which the cause was tried in the United States circuit court of appeals for the fifth circuit, and of all proceedings had, including the opinion of the court in the case of the Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Company et als., appellees, No. 750, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 8th day of May, A. D. 1899.

[SEAL.] J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

369 *Citation on appeal.*

The United States of America, fifth judicial circuit.

The President of the United States to The Western & Atlantic Railroad Company et al., or to Ed. Baxter, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellant, and you were appellees, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, this the 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

DON A. PARDEE,
Circuit Judge.

I hereby accept service of the above citation.

ED. BAXTER,
Solicitor for Appellees as shown of Record.

370 (Indorsed:) No. 750. United States circuit court of appeals, fifth circuit. The Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Co. et al., appellees. Citation on appeal. Filed April 27, 1899. J. M. McKee, clk. J. Ward Gurley, U. S. atty.; L. A. Shaver, solicitor.

371 In the Supreme Court of the United States. October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad Company, et al.	No. 307. (No. 751 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al.	No. 308. (No. 750 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, the Western Railway Company of Alabama, et al.	No. 309. (No. 752 in circuit court of appeals.)

Stipulation as to parts of record to be printed.

It is stipulated between the attorneys for the appellant and the appellees in the above stated cases that the following portions of the records in said cases be printed in the record in this court in case 308 only, and be omitted in printing the records in this court in cases 307 and 309, to wit:

372 1. The report and opinion of the Commission, which is the same in all three cases.

2. The opinion of the circuit court, which is the same in said three cases.

3. The opinion of the circuit court of appeals, which is the same in said three cases.

4. The stipulation entitled "Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526," and which was entered into in all three cases. Said stipulation appears on pages 94 and 95 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

5. The "Articles of association of the Southeastern Freight Association," which appear on pages from 262 to 266, inclusive, in the record in the circuit court of appeals in said case No. 308.

6. "An act to provide for the regulation of railroad freight and passenger tariffs," &c., in the State of Georgia, which appears in the record in the circuit court of appeals in said case No. 308, on pages from 314 to 321, inclusive.

7. The matter commencing with the words "Exhibit No. 6, filed by J. M. Brown," which embraces "Freight tariff classes—percentages," and also "Classified list of railroads in Georgia," which appears on pages from 305 to 308, inclusive, in the record in the circuit court of appeals in said case No. 308.

373 8. The assignment of errors, which is the same in all three cases.

9. The matter entitled "The Southern States Freight Association. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 267 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

10. The matter entitled "The Southern States Freight Association. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia, to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 268 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

11. The matter entitled "Statement of average receipts per ton per mile, etc., of various railroads," which appears on pages 323 and 324 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

L. A. SHAVER,
Counsel for Commission.

ED. BAXTER,
Counsel for Carriers.

374 (Indorsed:) File No., 17421, 17422, 17423. Supreme Court U. S., October term, 1899. Term Nos., 307, 308, & 309. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Co. et al., The Western & Atlantic R. R. Co. et al., and The Clyde Steamship Co. et al. Stipulation as to parts of records to be printed. Filed March 8, 1900.

(Indorsement on cover:) File No., 17422, U. S. C. C. of appeals, 5th circuit. Term No., 308. The Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Company et al. Filed May 25, 1899. Received office Supreme Court of U. S., May 11, 1899.

O

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 208. 70.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA AND WEST POINT RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MAY 26, 1899.

(SEAL.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 309.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA AND WEST POINT RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a United States of America, fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court room of said court in the city of New Orleans.

Before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY CO. et als., appellees.	No. 752.

Be it reme'bered that heretofore, to wit, on the 29th day of July, 1898, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Georgia was filed in the office of the clerk of said United States circuit court of appeals, in the words and figures following, to wit:

1 *Original bill of complaint.* Filed in clerk's office 27 day of May, 1893. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY; THE SOUTH Carolina Railway Company; The Georgia Railroad and Banking Company; The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad; The Richmond and Danville Railroad Company and the Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia; The Atlanta and West Point Railroad Company, and the Western Railway Company of Alabama; D. H. Chamberlain, receiver; H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers.	In equity, No. 526.

To the circuit court of the United States, sitting in equity, within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893,

HUMBLY COMPLAINING,

showeth to your honors that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South Carolina, having its principal office at Charles-
2 ton, in the said State of South Carolina; that the South Carolina Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South Carolina, having its principal office at Charleston, in the said State of South Carolina; and the defendant, D. H. Chamberlain, is the receiver thereof; that the Georgia Railroad and Banking Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in the said State of Georgia; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the said State of Kentucky; that the Central Railroad and Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Savannah, in the said State of Georgia; and the defendant, H. M. Comer, is the receiver thereof; that the Richmond and Danville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Virginia, having its principal office at Washington, in the District of Columbia, and the defendants, Reuben Foster and F. W. Huidekoper, are the receivers thereof; that the Georgia Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Birmingham, in the said State of Alabama; that the Atlanta and West Point Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta, in the said State of Georgia; that the Western Railroad Company of Alabama is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Atlanta, in the State of Georgia.

That the said corporate defendants were at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property partly by rail and partly by water, under a common control, management, or arrangement for continuous carriage or shipment through several of the United States, and particularly were the said defendants then engaged in the said business from the city of New York and other North Atlantic ports to Atlanta, Newnan, Grantville, Hogansville, Lagrange, and West Point, in the State of Georgia, and Opelika, in the State of Alabama, and as such common carriers were, during all the time aforesaid, and still are, subject to the provisions of the said act entitled "An act to regulate commerce," and said amendments thereto.

That the said corporate defendants were heretofore, to wit, on the 20th day of January, 1892, duly impleaded in a controversy not requiring a trial by jury, as provided for in the seventh amendment to the
3 Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of L. N. Trammell, Allen

Fort, and Virgil Powers, constituting and composing the railroad commission of Georgia, duly and legally created by the laws of the State of Georgia, for an alleged violation on the part of the said defendants of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears in and by said petition on file in the office of the said commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A; that a copy of said petition, duly attested by the secretary of the said Interstate Commerce Commission, under the seal of the said Commission, was duly forwarded by said Interstate Commerce Commission to each of the defendants aforesaid, as required by the thirteenth section of the said act.

That thereafterwards, to wit, on the 15th day of February, 1892, the Georgia Railroad and Banking Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 15th day of February, 1892, the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia, as lessees of the Georgia Railroad, under the name of the Georgia Railroad Company, filed their joint answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 25th day of February, 1892, the Atlanta and West Point Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 25th day of February, 1892, the Western Railway of Alabama, impleaded as the Western Railway Company of Alabama, filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards, to wit, on the 2d day of March, 1892, the South Carolina Railway Company, by Daniel H. Chamberlain, receiver thereof, filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit F.

4 That thereafterwards, to wit, on the 25th day of March, 1892, the Central Railroad of Georgia filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit G.

That thereafterwards, the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, at a special session thereof, duly and legally assembled for that purpose at the city of Atlanta, in the State of Georgia, on the 24th day of March, 1892, whereof all the parties had due and

sufficient notice, when said complainants, the Georgia railroad commission, as well as the said defendants, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, the Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia, the Atlanta and West Point Railroad Company, and the Western Railway Company of Alabama, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That thereafterwards, to wit, on the 3d day of September, 1892, the Louisville and Nashville Railroad Company, by its attorney, Ed. Baxter, filed a petition requesting a continuance of the said cause brought by the said Georgia railroad commission, as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafterwards, to wit, the said Commission duly formulated an order denying the said petition of the Louisville and Nashville Railroad Company, hereinabove referred to as a part hereof, as at large and more fully appears in and by said order on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit I.

That at the said hearing it was made to appear to the satisfaction of the said Commission that the said defendants had violated the provisions of the said act, entitled "An act to regulate commerce," in certain respects as was stated in the said petition herein referred to as a part hereof, and thereupon, on the 11th day of November, 1892, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties and made a report in writing thereon, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by said report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit J.

5 That thereafterwards and forthwith upon the determination of the said cause as aforesaid the said Commission duly formulated an order and notice in relation to the matters and things stated and charged in the said petition, based upon the findings and determination of the said Commission with respect thereto, agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit K.

That thereafterwards, to wit, on the 11th day of November, 1892, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants, and thereupon the petitioner shows that it has not been made to appear to the said Commission that, although more than twenty days have elapsed since the service of the said order upon the said defendants, that the said

defendants have ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard, and have willfully and knowingly violated and disobeyed said order and notice as hereinbefore set forth, hitherto neglected and refused and still do neglect and refuse to comply with the same in this, that the said defendants have not since, to wit, the 1st day of March, 1893, ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of property from New York and other north Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, Lagrange, or West Point, in the State of Georgia, than for the longer distance over the same line in the same direction to Opelika, in the State of Alabama; the said defendants not having prior to, to wit, the 1st day of March, 1893, made application to the said Commission for relief under the proviso clause of the fourth section of the act to regulate commerce.

WHEREFORE THE PETITIONER PRAYS—

1. That a subpœna or other suitable process may issue according to the course of equity, requiring the Clyde Steamship Company, the South Carolina Railway Company, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; the
6 Richmond and Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; the Atlanta and West Point Railroad Company, and the Western Railway Company of Alabama, D. H. Chamberlain, of Charleston, in the State of South Carolina; H. M. Comer, of Savannah, in the State of Georgia; Reuben Foster and F. W. Huidekoper, both of Washington, in the District of Columbia, severally to appear at such time and place as this honorable court may determine, then and there each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or

otherwise, to restrain the said defendants, their officers, servants, and attorneys, from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum of money, not exceeding the sum of $500 for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,
[L. S.] By EDW. A. MOSELEY,
The Secretary thereof, thereunto duly authorized.

7 EXHIBIT A.

8 L. N. TRAMMEL, ALLEN FORT, VIRGIL POWERS, constituting and composing the railroad commission of Georgia,

vs.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA Railroad Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond and Danville Railroad Company and the Georgia Pacific Railroad Company, lessees of the Central Railroad of Georgia; The Atlanta and West Point Railroad Company, and The Western Railroad Company of Alabama.

The petition of the above-named complainants respectfully shows:

First. That they compose and constitute the railroad commission of the State of Georgia; that said commission has been duly and legally created by the laws of the State of Georgia, and that its duties, under the laws of said State, are to make reasonable and just rates of freight and passenger tariffs to be observed by all railroad companies doing business in this State on the railroads thereof, and, among other matters, to investigate all through freight rates from points out of Georgia to points in Georgia, and whenever the said commission finds that the through rate charged into Georgia is excessive, unreasonable, or discriminating in its nature, they shall call the attention of the railroad officials in Georgia to the fact, and that, when such rates are not changed, it shall be the duty of the commission to present the facts to the Interstate Commerce Commission and appeal to it for relief.

This commission, therefore, having no personal or pecuniary interest in the matter herein set out except to see that the law is enforced for the benefit of society, and the discharge of the duties prescribed for them by the laws of the State of Georgia, come now, and in the public interest complain in their own name, but for the sole interest of the public, and say:

Second. That the defendants above named are common carriers, and

under a common control, management, or arrangement for continuous carriage or shipment are engaged in the transportation of passengers and property, partly by water and partly by railroad, between Eastern points, to wit, New York, Boston, Philadelphia, and points in the State of Georgia, and to the city of Opelika, in the State of Alabama, and
9 as such common carriers are subject to the act to regulate commerce. That the Atlanta and West Point Railroad and the Western Railroad of Alabama are operated as one line of road from the city of Atlanta, Ga., to the city of Montgomery, Ala., the city of Atlanta being the eastern terminus of the Atlanta and West Point Railroad, and the town of West Point being the western terminus of said road, and Opelika being a city 22 miles west of the town of West Point, on the Western Railroad of Alabama. The tracks of said two railroads join at West Point, and the same cars, engines, crew, and trains, carrying both freight and passengers for all points on the line of both roads, run through from Atlanta to Montgomery, Ala., without any change.

Third. That such (and said) common carriers, under such common control, management, or arrangement for continuous carriage, have made and fixed, and have heretofore and do now charge, collect, and receive from the people of this State, and of the city of Opelika, in the State of Alabama, the following-named rates for tariff for through freight shipped and transported by them from the city of New York, in the State of New York, to the termini of and stations on the Atlanta and West Point Railroad, in the State of Georgia, and to the city of Opelika, in the State of Alabama, so located as aforesaid, to wit:

Through rates of freight from New York, Philadelphia, etc., via Charleston, to Atlanta and West Point stations, and to Opelika, on the Western Railroad of Alabama.

	Per hundred pounds.											Per barrel.	
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Atlanta	114	98	86	73	60	49	36	48	40	39	58	68	78
Newnan	129	109	98	81	68	55	46	55	43	40	67	78	77
Grantville	147	128	114	97	80	64	51	63	49	47	78	92	96
Loganville	151	132	116	100	81	65	52	64	49	48	79	93	96
Lagrange	154	135	118	102	82	66	53	65	50	48	80	97	97
West Point	142	124	110	93	77	62	49	62	51	49	76	88	100
Opelika, Ala.	114	98	86	73	60	49	36	48	40	39	58	68	78

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first class, second class, etc., and class A, class B, and C, and bbl. to barrels, and the figures in the lines opposite the name of the town or station mean so much in cents, as expressed by said figures, on the hundred pounds of freight of each class, and per barrel.

That the transportation of like kind of through freight is under substantially similar circumstances and conditions to such terminus and stations on said Atlanta and West Point Railroad and Western Railroad of Alabama, and that said carriers have not been authorized by your Commission to charge less for longer than shorter distances for the transportation of said through freight.

Petitioners further show that the city of Atlanta, in the State of Georgia, is the eastern terminus of said Atlanta and West Point Railroad, one of the common carriers so engaged aforesaid in the transportation of passengers and property, partly by water and partly by

railroad, under such common control, management, and arrangement for continuous carriage from the city of New York and other
10 Eastern points, and that the city of Montgomery, in the State of Alabama, is the western terminus of the Western Railroad of Alabama, also one of said carriers, and both roads being operated as one through line, and the two cities, which are the termini of said road, are located and distant from each other as follows: Montgomery, by the line of railroad, is distant from Atlanta one hundred and seventy-five miles.

And your petitioners show that, notwithstanding the town and station of West Point is 87 miles west of Atlanta and 88 miles east of Montgomery, and that Opelika is 102 miles west of Atlanta and 66 miles east of Montgomery, and that Lagrange is 71 miles west of Atlanta and 104 miles east of Montgomery, and that Hogansville is 58 miles west of Atlanta and 117 miles east of Montgomery, and that Grantville is 124 miles east of Montgomery and 51 miles west of Atlanta, and that Newnan is 39 miles west of Atlanta and 136 miles east of Montgomery, the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of New York and other Eastern points to the towns and stations of West Point, Lagrange, Hogansville, Grantville, and Newnan are more and greater on each class than the amount charged and received for freight to the city of Opelika, which is a greater distance from the city of New York (and other Eastern points), which is the shipping point in both instances, and so the rate collected and charged for freight shipped from New York by the defendants to the towns and stations on the said railroad is greater than the rate collected and charged by them to the city of Opelika, notwithstanding the fact that the city of Opelika is at a greater distance from said shipping point, and there is no water competition.

Your petitioners say that, in their opinion, the rates of freight into the towns and stations on said railroad in the State of Georgia as aforesaid were unreasonable and discriminating in their nature, and your petitioners, as a commission, called the attention of the officials of the said Atlanta and West Point Railroad to the fact and urged upon them the propriety of changing such rate, but the said officials refused and declined to change the same, and continue and still continue to charge and collect the aforesaid rates of freight to the towns and stations as aforesaid.

Whereupon, petitioners, as the railroad commission of the State of Georgia, come and present the facts as aforesaid and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia, and to the different towns and stations of the Atlanta and West Point Railroad and Western Railroad of Alabama, so made and charged and collected by the carriers as aforesaid is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled an act to regulate commerce.

Wherefore petitioners pray that the defendants may be required to answer the charge herein, and that, after due hearing and investi-
11 gation, an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and

to such other and further order as the Commission may deem necessary in the premises.

Dated Atlanta, Ga., January 15, 1892.

L. N. TRAMMELL.
ALLEN FORT.
VIRGIL POWERS.

STATE OF GEORGIA, *Fulton County:*

L. N. Trammell, deing duly sworn, says that he is a member of the Georgia railroad commission, the complainants in this proceeding, and that the matters set forth in the foregoing petition are true as he verily believes.

Subscribed and sworn to before me this 15th day of January, 1892.

WM. A. WRIGHT,
Comptroller-General.

13 EXHIBIT B.

14 L. N. TRAMMEL, ALLEN FORT, VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY ET AL.

To the Honorable The Interstate Commerce Commission:

In the answer to the complaint above stated against the defendants above named or indicated, the Georgia Railroad and Banking Company, one of the defendants, answering says:

This defendant is not engaged in the business of transporting freight by railroad or otherwise. This defendant being thereunto empowered by its charter, did, on the 7th day of May, 1881, lease all its railroads to one William M. Wadley and his assigns for the period of ninety-nine years from the 1st day of April, 1881.

Said William M. Wadley thereafter, as this defendant is informed and believes, assigned said lease to the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, and said railroad companies now operate said railroads, and have so done for ten years or more, under the name of the Georgia Railroad Company. This defendant carries on no business but that of banking, and has no concern with or duties to be performed as to the matters and things complained of in said complaint.

JOS. B. CUMMING,
Respondents' Solicitor.

STATE OF GEORGIA, *Richmond County:*

You, Charles H. Phininy, do swear that you are the president of the Georgia Railroad and Banking Company, and that the facts stated in the foregoing answer are true.

C. H. PHININY.

Sworn to and subscribed before me this 12th day of February, 1892.

[SEAL.] WM. LYON MARTIN,
Notary Public, Richmond County, Ga.

15 EXHIBIT C.

16 L. N. TRAMMEL, ALLEN FORT, VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY ET AL.

To the Honorable The Interstate Commerce Commission:

The joint answer of the Louisville and Nashville Railroad Company and the Central Railroad and Banking Company of Georgia as lessees of The Georgia Railroad under the name of The Georgia Railroad Company.

These defendants answering, say:

I.

Said Georgia Railroad is a common carrier, but it is not under a common control or management with the other defendants, or any of them. It has an arrangement with the other defendants for continuous carriage of freight.

II.

These respondents of the Georgia Railroad Company can not alone fix the tariffs for the transportation of such through freight. It is fixed by agreement between all the carriers engaged in such continuous carriage, such agreement being reached in accordance with natural and inherent laws of trade and commerce beyond the control of these respondents, or of all or any of defendants. The proportion of the charges received by The Georgia Railroad Company for its part of the carriage is just and reasonable.

III.

The transportation of like kind of through freight, in reference to which this complaint is filed, is not under substantially similar circumstances to the terminus and stations on said Atlanta and West Point Railroad and Western Railroad of Alabama, but is affected at various points by conditions of competition by other routes of transportation, and the tariff of charges complained of is therefore not in violation of section 4 of the act of Congress to regulate freight.

And, having fully answered, these respondents beg to be hence dismissed, etc.

JOS. B. CUMMING,
Solicitor for Respondent.

17 STATE OF GEORGIA, *Richmond County:*

You, John W. Green, general manager of the Georgia Railroad, do swear that the foregoing answer is true.

JNO. W. GREEN.

Sworn to and subscribed before me this 6th day of February, 1892.

[SEAL.] WM. LYON MARTIN,
Notary Public, Richmond County, Ga.

EXHIBIT D.

Before the Interstate Commerce Commission.

L. N. TRAMMELL, ALLEN FORT, AND Virgil Powers, constituting and composing the railroad commission of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY and others.

Complaint for violation of section 4 of an act to regulate commerce, dated January 15, 1892.

The answer of the Atlanta and West Point Railroad Company to the above-styled petition, filed before the Interstate Commerce Commission by the Railroad Commission of Georgia, vs. The Clyde Steamship Company, this respondent, and others.

I.

The respondent admits that petitioners compose the railroad commission of the State of Georgia, but whether said commission has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, respondent prefers that the laws be allowed to speak for themselves.

This respondent is not aware what interest, pecuniary or otherwise, that the said Georgia railroad commission have in the matter set forth, but on the contrary it denies that they have any interest or lawful right to file the petition instituted by them. It further denies that the said petition is in the interest or for the benefit of society, but that on the contrary the granting of the same would be exceedingly deleterious to the State of Georgia.

It further affirms that the said railroad commission of Georgia was constituted by the general assembly of Georgia under the grant of power made to it by the constitution under article 4, section 2, paragraph 1, by which the power of the general assembly over the question of railroad freights, tariffs, and discriminations is limited to passing laws from time to time to regulate freight and passenger tariffs and prohibit unjust discriminations on the various railroads of the State of Georgia and enforcing such laws by adequate penalties, and petitioner denies that the said Georgia railroad commission have any constitutional warrant or authority for complaining in the matter of the above-stated petition before the honorable Interstate Commerce Commission, and having no authority, except such as is derived from laws passed pursuant to said constitution, as limited by the Constitution of the United States, respondent denies that said commission has any right to maintain this complaint.

II.

Respondent denies that the defendants named in said above stated complaint are common carriers under a common control, management, or arrangement for continuous carriage or shipment, or that the same are

engaged under any such common control, management, or arrangement in the transportation of passengers and property by railroad between points stated in said petition. They admit that it is true that passengers and property going from the city of Charleston and points in the State of Georgia to the city of Opelika, in the State of Alabama, pass over the line of this respondent.

Respondent admits that the Atlanta and West Point Railroad commences at the city of Atlanta and terminates at the city of West Point, Ga., and that the Western Railway of Alabama commences at the city of West Point, in the State of Georgia, but it is not true that the same terminates at Montgomery, Ala., its terminus being Selma, in said State of Alabama. But respondent says that it is wholly untrue that there is any community of interest or control over the said Atlanta and West Point Railroad and Western Railway of Alabama; that their stocks are owned by different persons; that their boards of directors are different, although some members may be common to each board; that no one stockholder, either person, or syndicate, or corporation, exercises a common control over the two roads, and that while from motives of economy trains are run over said roads without change of engines, cars, or crew, mileage, trackage, and freight balances, and all other negotiations are conducted between the two roads just as they are conducted between any other two independent lines the cars from one of which pass to the line of the other.

III.

Respondent denies that it and the other respondents, as common carriers under common control, management, or arrangement for continuous carriage, have made and fixed the rates named in paragraph 3 of said petition, for the reason that respondent denies that there is any common control, management, or arrangement between them.

Respondent admits that there does exist the tariff of freights over the lines of road from Charleston, in the State of South Carolina, to the several points, except Hogansville, named in the list set forth in said paragraph 3 of said petition, at the rates specified in said petition. But respondent absolutely denies that the transportation of like kinds of through freight is under substantially similar circumstances and conditions to such terminus and stations on said Atlanta and West Point Railroad, and respondent denies that the said charges are less for longer than shorter distances for the transportation of said through freight.

Respondent admits that the city of Atlanta is the eastern terminus of the Atlanta and West Point Railroad, but denies that said rail-
22 road is engaged in the transportation of passengers and property, partly by water and partly by rail, under common control, management, or arrangement with any other railroad, but is an independent carrier operating its own line of road under its own control. It denies that the city of Montgomery is the western terminus of the Western Railway of Alabama, and denies that the said Western Railway of Alabama is under common control with itself. It denies that the said roads are operated as one road under a common control or management. It admits that the city of Montgomery is 175 miles by rail from the city of Atlanta. It admits that the distances of the

towns of West Point, Opelika, Lagrange, Hogansville, Grantville, and Newnan from Atlanta and Montgomery, respectively, are correctly stated in said petition. It denies that the amount of rail transportation necessary to reach the city of Opelika for continuous carriage, partly by rail and partly by water, from the city of New York and other Eastern points to the city of Opelika is greater than to the towns and cities of West Point, Lagrange, Hogansville, Grantville, and Newnan, and it avers that the said railroad commission of Georgia has blindly shut its eyes to the fact that there are several routes, partly by rail and partly by water, from the city of New York and other Eastern points by which freights may pass over the lines of your respondent to points named. But your respondent further avers that the said town of Opelika is not upon the line of respondent, but upon the line of an independent carrier. Respondent further avers that the city of Savannah is a seaport lying in the State of Georgia, in direct communication with the city of New York; that the distances via Atlanta from the city of Savannah to points upon respondent's line are about the same as from the city of Charleston, in fact, if anything, a little less.

That the said railroad commission of Georgia for themselves established rates of freight from the city of Savannah to all points upon this respondent's line between Atlanta and West Point, its two termini, all of which said points are in the State of Georgia, and that the rates of freight charged for transportation from Charleston to the several points on respondent's lines are the same as those fixed by the railroad commission of Georgia as just and reasonable for the transportation of the same classes of freight from Savannah to the same points on respondent's line, and respondent submits that it doth not lie in the mouth of the railroad commission of Georgia to claim that said rates of freight to points on respondent's lines are unjust and unreasonable when they are the same as those fixed by the said railroad commission of Georgia from the city of Savannah to the same point.

Respondent further shows that even if the legislature of Georgia has the right under the constitution of said State to authorize the commission of Georgia to institute proceedings of this character, that they are simply authorized to investigate through freight rates from points out of Georgia to points in Georgia, and from points in Georgia to
23 points out of Georgia, and not from points out of Georgia to points out of Georgia; and that if the complaint of these petitioners is that the rate to the city of Opelika is too low, that the investigation of this complaint by the railroad commission of Georgia is unwarranted by the act attempting to authorize them to institute proceedings of this character before the Interstate Commerce Commission.

IV.

Respondents deny that the rates of freight into the towns and stations on said railroad in the State of Georgia are or were unreasonable or unjustly discriminating in their nature. On the contrary, respondents aver that so far as they have any control over or interest in said rates they are fair, equal, and open to all; that they do not unjustly discriminate against any person or place.

And now, having fully answered, respondents pray to be discharged and that said complaint be dismissed.

CALHOUN, KING & SPALDING,
Attorneys for Atlanta and West Point Railroad Company.

STATE OF ALABAMA, *County of Montgomery:*

Personally before the undersigned, a notary public in and for said county, came R. E. Lutz, who, being duly sworn, on oath says that he is the traffic manager of the Atlanta and West Point Railroad Company, and that he has carefully read the foregoing answer of the Atlanta and West Point Railroad Company, and that the facts therein stated are true, as he verily believes.

R. E. LUTZ,
Traffic Manager.

Sworn and subscribed before me this 22d day of February, A. D. 1892.

[SEAL.] H. C. DAVIDSON,
Notary Public.

25 EXHIBIT E.

26 *Before the Interstate Commerce Commission at Washington, D. C.*

L. N. TRAMMEL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY AND OTHERS.

Comes the Western Railway of Alabama, impleaded in this case as the Western Railroad Company of Alabama, and waiving this irregularity, but asking merit for same, for answer to the complaint says:

I.

It admits that petitioners compose and constitute what is known as the railroad commission of the State of Georgia, but that said commission has been duly and legally created by the laws of the State of Georgia; that they possess the powers and privileges claimed by them in their complaint, or that they have no personal or pecuniary interest in the matter therein set out, this defendant does not know, does not admit, and demands that the same be proven; and this defendant most emphatically denies that said Georgia railroad commission has any right or authority for complaining in the matter of said petition before the honorable Interstate Commerce Commission or of making this defendant a party to said proceeding; and it further denies that said complaint is made for the sole interest of the public.

On the contrary, this respondent avers that the granting of petitioner's request would be detrimental to the public interest; and to entertain their complaint, as against this defendant, would be contrary to public policy in allowing an artificial person, created by the Georgia legislature, to interfere with the business of an Alabama corporation carried on in the State of Alabama, and in nowise affecting the State of Georgia or her citizens.

II.

This respondent denies each and every averment contained in the second paragraph of said complaint, except that it is subject to the act to regulate commerce; that Atlanta and West Point are the termini of the Atlanta and West Point Railroad; that Opelika is a city 22 miles west of West Point, and that the tracks of said two railroads join at West Point. These it admits.

27

III.

For answer to the third paragraph of the complaint, this respondent avers that it is an Alabama corporation, owning and operating a line of railway extending from Selma, Ala., to West Point, Ga., and none other; that by no common control, management, or arra'gement, for continuous carriage or otherwise, has it ever made, fixed, charged, collected, or received from the people of Georgia, or any other people, any rates for a tariff for through freight shipped and transported from New York, Philadelphia, etc., via Charleston and Atlanta, to Atlanta and West Point stations. It admits that the tariff of rate to Opelika is correctly quoted in said complaint, but denies that the transportation of like kind of freight is under substantially similar circumstances and conditions to Opelika, Ala., and the stations on the Atlanta and West Point Railroad; and denies that said charges are less for longer than shorter distances for the transportation of said through freight.

And this respondent says that the petitioners, the Georgia railroad commission, are mistaken "in their opinion" that the rates of freight into the said Georgia towns and stations are unreasonable and discriminating in their nature. Wherefore the respondent prays that said complaint be dismissed.

Respectfully submitted.

THE WESTERN RAILWAY OF ALABAMA,
By R. E. LUTZ,
Traffic Manager.

STATE OF ALABAMA, *Montgomery County, ss:*

R. E. Lutz, being duly sworn, says that he is the traffic manager of the Western Railway of Alabama, one of the defendants in this proceeding, and that the foregoing answer is true as he verily believes.

R. E. LUTZ,
Traffic Manager.

Sworn and subscribed to before me this 22d day of February, 1892.

[SEAL.] H. C. DAVIDSON,
Notary Public.

29 EXHIBIT F.

30 *The United States of America, Interstate Commerce Commission.*

L. N. TRAMMELL, ALLEN FORT, VIRGIL POWERS, constituting and composing the railroad commission of Georgia,

vs.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA Railroad Company, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, the Central Railroad and Banking Company, and others.

The answer of the South Carolina Railway Company, by Daniel H. Chamberlain, receiver of said company, to the petition filed before the Interstate Commerce Commission, by L. W. Trammell, Allen Fort, and Virgil Powers, composing the railroad commission of Georgia, against the Clyde Steamship Company, the South Carolina Railroad Company, the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, the Central Railroad and Banking Company of Georgia, and others.

I.

This respondent says that the South Carolina Railway Company, which is an entirely distinct corporation from South Carolina Railroad Company, referred to in the petition, is a corporation under the laws of the State of South Carolina, being the purchaser of the property and franchises of said South Carolina Railroad Company, and under the order of the circuit court of the United States for the district of South Carolina, sitting in equity in the case of F. W. Bound vs. The South Carolina Railway Company and others, bearing date the 7th of October, 1889, this respondent was appointed receiver of the said railway company and is now operating the same under the order of said court.

II.

This respondent admits that petitioners compose the railroad commission of the State of Georgia, but as to whether said commission has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, this respondent prefers that said laws should speak for themselves.

31 III.

This respondent admits that he operates the said South Carolina Railway Company as a common carrier, but says that it is not under a common control or management with the other defendants, or any of them, but it has an arrangement for continuous carriage of freight.

IV.

Respondent denies that the rates of freight for its proportion of the carriage of goods are unreasonable and discriminating in their nature;

on the contrary, respondent avers that all of said rates are fair, equal, and open to all, the same being fixed and arrived at in accordance with the laws of trade and commerce necessary for the proper conduct of this respondent's road, and beyond the control of this respondent, or any of defendants.

V.

That the transportation of like kind of freight in reference to which the complaint is filed is not under substantially similar circumstances to the terminus and stations on said Atlanta and West Point Railroad and Western Railroad of Alabama, but is affected at various points by conditions of competition by other routes of transportation, and the tariff of charges complained of is not, therefore, in violation of section 4 of the act of Congress to regulate freight.

BRAWLEY & BARNWELL,
Respondent's Attorneys.

STATE OF NEW YORK, *County of New York, ss:*

Daniel H. Chamberlain, being duly sworn, says that he is receiver of the South Carolina Railway Company; that he is in charge of the operations of the said South Carolina Railway Company, and that the matters set forth in the foregoing answer are true as he verily believes.

DANIEL H. CHAMBERLAIN.

Subscribed and sworn to before me this 1st day of March, 1892.

[SEAL.] C. H. PAYNE,
Notary Public, Kings County.

Certificate filed in New York County.

33 EXHIBIT G.

34 *Interstate Commerce Commission.*

BY THE GEORGIA RAILROAD COMMISSION *against* THE CLYDE STEAMSHIP COMPANY, THE South Carolina Railroad Company, The Georgia Railroad and Banking Company, et al. — Complaint for violation of section 4 of an act to regulate commerce.

Answer of the Central Railroad of Georgia.

The Central Railroad of Georgia, one of the above-named respondents, for its separate answer to the complaint herein (without waiving and specially reserving all rights of exception and objection thereto), respectfully says:

First. The respondent admits that petitioners compose and constitute what is known as the railroad commission of the State of Georgia, but whether said commission has been duly and legally created by the laws of the State of Georgia, that they possess the powers and privileges claimed for them in their complaint, or that they have any personal or pecuniary interest in the matter therein stated, this respondent does not know, does not admit, and demands that the same be proved.

This respondent most emphatically denies that said Georgia railroad commission has any right or authority for complaining in the matter of the said company before the honorable Interstate Commerce Commission, or of making this respondent a party to said proceeding. It further denies that said complaint is made for the sole interest of the public. On the contrary, this respondent affirms that the granting of the various requests would be detrimental to the public interest.

Second. That it denies each, every, and any allegation in said complaint charging it with any act or acts in violation of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and amended March 2, 1889.

Third. That it denies each, every, and any other charge or allegation against it made or contained in said complaint.

Wherefore this respondent respectfully prays that the said complaint may be dismissed as to it.

THE CENTRAL RAILROAD OF GEORGIA,
By THOS. COBB JACKSON, *Counsel.*

35 STATE OF GEORGIA,
City of Atlanta, ss:

Sol Haas, being first duly sworn, says that he is the traffic manager of the Central Railroad of Georgia, the respondent making the foregoing answer, and that the same is true as he is informed and believes.

SOL HAAS,
Traffic Manager.

Subscribed and sworn to before me this 23d day of March, 1892.

[SEAL.] A. A. MEYER,
Notary Public in and for the County of Fulton, Ga.

37 EXHIBIT H.

38 [Louisville and Nashville R. R. Company.]

OFFICE OF DISTRICT ATTORNEY,
Nashville, Tenn., Sept. 3, 1892.

Ga. R. R. Commission *vs.* W. & A. and L. & N. R. R. Cos. et al., 7897.
Ga. R. R. Commission *vs.* Clyde S. S. Co., L. & N. R. R., et al., 7894.
Ga. R. R. Commission *vs.* Clyde S. S. Co., So. Car. Rd. et al., 7979.
Ga. R. R. Commission *vs.* L. & N. and N. C. & St. L. Ry. et al., 7980.
Ga. R. R. Commission *vs.* So. Car. R. R. and L. & N. R. R. et al., 7981.

EDW. A. MOSELEY, Esq.,
Secty. I. C. C.,
Washington, D. C.

DEAR SIR: In reply to your telegram of 24th ult.:

These cases involve the same question as the Social Circle case, which has been prepared for trial with the hope that it can be heard at the approaching term of the U. S. Supreme Court. Mr. Safford writes me that his health is such that he can not argue the Social Circle case for several weeks, but I am in hopes that he will recover in time to argue that case so as to get it heard at the approaching term of the U. S. Supreme Court. The decision of that case by the Supreme Court will

virtually settle all of these cases, and I respectfully request that the Commission continue these cases, say for 90 days, or until we can see if the Social Circle case can be heard by the Supreme Court at the approaching term. Will you kindly present this application for me.

Yours, truly,

ED. BAXTER.
S.
District Attorney.

39 EXHIBIT I.

40 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of October, A. D. 1892.

Present: Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Commissioners.

THE GEORGIA RAILROAD COMMISSION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al., and six other cases.

On reading the application of Edward Baxter, esq., counsel for the above-named defendant, for postponement of the decision of these cases for ninety days, or until after the determination of the so-called Social Circle case, entitled upon the record "Interstate Commerce Commission against The Cincinnati, New Orleans and Texas Pacific Railway Company et al.," and now pending in the United States circuit court for the northern district of Georgia,

It is ordered that said application be, and is hereby, denied.

81 EXHIBIT K.

82 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of November, A. D. 1892.

Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, Commissioners.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama. } No. 326.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of

the matters and things involved in this proceeding having been had, and the Commission having on the date hereof made and filed a report and opinion containing its findings of fact and conclusions thereon, said report and opinion is hereby referred to and made a part of this order; and the Commisssion having, as appears by said report and opinion, found and decided, among other things, that the common carriers operating the Clyde Steamship line, the South Carolina Railway, the Georgia Railroad, and the Atlanta and West Point Railroad are not justified under the fourth section of the act to regulate commerce in charging or receiving more in the aggregate for the transportation of property from New York and other North Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, Lagrange, or West Point, in the State of Georgia, than they, together with the Western Railway Company of Alabama, charge or receive for the transportation of a like kind of property for the longer distance from New York and other North Atlantic ports to Opelika, in the State of Alabama,

83 It is ordered and adjudged that the Clyde Steamship Company, the South Carolina Railway Company, and D. H. Chamberlain, the receiver thereof; the Georgia Railroad and Banking Company, the Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, as lessees of the Georgia Railroad; H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia; the Richmond and Danville Railroad Company and the Georgia Pacific Railway Company, as lessees of the Central Railroad of Georgia; F. W. Huidekoper and Reuben Foster, receivers of said Richmond and Danville Railroad Company, and the Atlanta and West Point Railroad Company, that is to say, such of them as are operating as common carriers the Clyde Steamship line, the South Carolina Railway, the Georgia Railroad, and the Atlanta and West Point Railroad, respectively, do wholly cease and desist, within twenty days after service of a copy of this order, from charging or receiving any greater compensation in the aggregate for the transportation of property from New York and other North Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, Lagrange, or West Point, in the State of Georgia, than they, together with the Western Railway Company of Alabama, charge or receive for the transportation of like kind of property from New York and other North Atlantic ports for the longer distance over the same line in the same direction to Opelika, in the State of Alabama, the shorter being included within the longer distance; or that said common carriers, including said Western Railway Company of Alabama, do, within the time above specified, make and file with this Commission an application or applications, as may be required, and as provided in the proviso clause of the fourth section of the act to regulate commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from New York and other North Atlantic ports to the shorter distance points aforesaid than for such transportation over the same line in the same direction for the longer distance to Opelika, aforesaid, and show cause within sixty days after service of a copy of this order why such application, or applications, for relief should be granted; and upon such application, or applications, the

evidence already taken herein may be used. In case said common carriers elect to apply for relief as hereby provided, and such application for relief, after investigation by the Commission, be denied, then the order to cease and desist as hereinabove set forth shall stand, and compliance therewith will be required within twenty days after service of the order denying said application.

It is further ordered that a notice embodying this order be forthwith sent to each of said common carriers, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

84 OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, twelve in number, and marked A to K, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 16th day of May, 1893.

[L. S.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

[L. S.] (Signed) EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

85 *Order for defendants to show cause and notice.*

In the circuit court of the United States for the northern district of Georgia, March term, 1893.

INTERSTATE COMMERCE COMMISSION
versus
THE CLYDE STEAMSHIP COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; The Georgia Railroad & Banking Company; The Louisville & Nashville Railroad Company and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad; The Richmond & Danville Railroad Company and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia; Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama; D. H. Chamberlain, receiver, H. M. Comer, receiver, and Reuben Foster and F. W. Huidekoper, receivers. } No. 526.

Petition under interstate-commerce act—Notice to defendants—In equity.

These proceedings having been filed under the act to regulate commerce, approved February 4, 1887, as amended March 2, 1889, February 10, 1891, and February 11, 1893—

It is ordered and directed by the court that the defendant corporations

appear before the United States circuit court for the northern district of Georgia, at the court room in Atlanta, Georgia, on the 10th day of July, 1893, at 10 o'clock a. m., to answer such proceedings and to show cause why the prayer of petition should not be granted; and it is further ordered that a copy of this order be served on each of the corporations of this State by serving the principal officer of the same, and that the non-
resident defendant corporations be served by the clerk of this court
86 mailing copy of this order in a registered letter, addressed to the president or chief officer at the principal office of such corporation set out in said petition and such corporations as are in the hands of a receiver, in the same manner, or service may be acknowledged by counsel representing such defendants; and it being represented to the court that copies of the petition or bill are printed and convenient (without holding the same to be necessary and proper notice under act above referred to), the clerk is directed to attach a copy of said petition or bill to each of said orders or notices and let them be served therewith.

In open court this 19 day of June, 1893.

WM. T. NEWMAN,
U. S. Judge.

Service.

I hereby certify that I have this 20 day of June, 1893, mailed a certified copy of the within order and a copy of the petition in this case in registered letters as follows:

To the president or chief officer of Clyde Steamship Co., Charleston, S. C.

To the president or chief officer of South Carolina Railway Company, Charleston, S. C.

To the president or chief officer of Louisville & Nashville R. R. Co., Louisville, Ky.

To the president or chief officer of Richmond & Danville R. R. Co., Washington, D. C.

To the president or chief officer of Georgia Pacific Ry. Co., Birmingham, Ala.

D. H. Chamberlain, receiver South Carolina Railway Co., Charleston, S. C.

Reuben Foster & F. W. Huidekoper, receivers Richd. & Danv. R. R. Co., Washington, D. C.

O. C. FULLER, *Clerk.*

Service upon H. M. Comer, president.

I certify that on the 22nd day of June, 1893, at Savannah, in my district, I personally served a copy of the within petition and order on H. M. Comer, president of the C. R. R. and Banking Co. of Ga., and on H. M. Comer, and at the same time exhibiting this the original. Return of

FRANK LEVERETT, *U. S. Marshal.*
By J. C. HEYWARD, *Deputy.*

Dated Savannah, Ga., June 22nd, 1893.

Filing: Returned and filed in office, June 23, 1893. O. C. Fuller, clerk.

87 *Order allowing defendants thirty days to answer, etc.*

In the circuit court of the United States for the northern district of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
CLYDE STEAMSHIP COMPANY AND GEORGIA RAILROAD & Banking Co., et al. } No. 526.

By consent of parties it is ordered, in the above-stated case, that the defendants, and each of them therein named, be, and they are hereby, allowed thirty days from this date to answer all proceedings in the above-stated case, with all of the rights of pleading to said petitions now enjoyed by said defendants.

It is further ordered that the judge of this court may during vacation by order direct the method in which testimony may be taken therein, and appoint an examiner or other officer to take such testimony.

In open court this 10th day of July, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 10 day of July, 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Answer of the Richmond & Danville Railroad et al.

In the circuit court of the United States for the northern district of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
CLYDE STEAMSHIP COMPANY, AND OTHERS. } In equity, No. 526.

Joint answer of The Richmond & Danville Railroad Company, The Georgia Pacific Railway Company, and F. W. Huidekoper and Reuben Foster, receivers of The Richmond & Danville Railroad Company.

88 *To the honorable the judges of the circuit court of the United States for the northern district of Georgia:*

These respondents, answering, say:

I. These respondents admit the filing of the petition before the Interstate Commerce Commission by the railroad commission of Georgia, as alleged in the petition herein, and that Exhibit A, annexed to said petition, is a true copy thereof. These respondents also admit that on said 20th day of January, 1892, the lines of the said Central Railroad and Banking Company of Georgia were leased to the respondent, The Georgia Pacific Railway Company, and were operated by the respondent, The Richmond & Danville Railroad Company; and further admit that said Interstate Commerce Commission did hear the matter, as alleged in the petition herein, and did make a report in writing thereon, of which Exhibit J, annexed to said petition, is a true copy, and did thereafterwards issue and duly serve on each of these respondents the order of which Exhibit K, annexed to said petition, is a true copy.

These respondents, however, aver that before the hearing of said matter before the Interstate Commerce Commission, to wit, on the 4th day of March, 1892, the said lines of the Central Railroad and Banking Company of Georgia were, by order of the circuit court of the United States for the southern district of Georgia, placed in the hands of a receiver of said court, and thereupon the said lease of said lines to the respondent, The Georgia Pacific Railway Company, was surrendered and annulled, and said respondent ceased to have any possession or control of said lines, and the said Richmond & Danville Railroad Company ceased to hold and operate the same, all of which facts were well known to said Interstate Commerce Commission at the time of making their said report.

II. Respectfully answering, these respondents say that the said Richmond and Danville Railroad Company and the Georgia Pacific Railway Company were parties to the said proceedings before the Interstate Commerce Commission only in the character and relation of lessee of the Central Railroad and Banking Company of Georgia, which character and relation to the matters of said proceedings had ceased as aforesaid before the hearing by the Interstate Commerce Commission and the making of its report and order thereon.

That the said report finds no facts relative to the conduct of either of the respondents, The Richmond & Danville Railroad Company or the Georgia Pacific Railway Company, in the transportation as a common carrier of freight or passengers on the lines of railroad operated by
89 either of said respondents at the date of the hearing on which said report is made. That in none of the routes described and mentioned in said report does any railroad then or now operated by either of said respondents form a part.

These respondents respectfully call the attention of the court to the following language on page 4 of said report:

"As to the second of the minor questions whether certain of the defendants, to wit, the Georgia Railroad & Banking Company, the Central Railroad and Banking Company, the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company are common carriers controlling rates and operating roads, parts of through lines between points of shipment and destination, it seems sufficient to hold generally that only those who are in any degree responsible for transportation charges over the respective roads will be expected to comply with any order for the readjustment of those charges which may hereafter be issued in these proceedings."

These respondents aver that it is not true, as alleged in the petition herein, that these respondents, "unmindful of their duty and the decision and determination of the said Commission as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard, and have willfully and knowingly violated and disobeyed said order and notice as hereinbefore set forth, hitherto neglected and refused, and still do neglect and refuse, to comply with the same," because the said report under the facts found and by its express terms had no application to any line operated either by the Richmond & Danville Railroad Company or the Georgia Pacific Railway Company, and the said order of the Commission, based on said report, does not apply to either of said respondents.

III. Further answering, these respondents say that said order of the Commission, to enforce which the present proceeding is instituted, is not a legal order to which obedience is due under the act to regulate commerce and the amendments thereof, for the reason, among others, that said order is based upon erroneous findings of fact and law stated in the said report of the Commission.

These respondents specify the following errors:

1. The Commission erred in finding that the shipment to the shorter-distance points mentioned in the report were made under an arrangement for continuous carriage or shipment within the provisions of the said act to regulate commerce.

2. The Commission erred in finding that the shipments made to
90 the shorter-distance points mentioned in the report were made over the same line as the shipments made to the longer-distance points mentioned therein.

3. The Commission erred in finding that competition between carriers does not constitute a circumstance or condition within the meaning of the fourth section of the act to regulate commerce.

4. The Commission erred in finding that the competition between markets does not constitute a circumstance or condition to be considered under the provisions of the fourth section of said act.

Wherefore these respondents, having fully answered, pray that the petition herein be dismissed as to them, and that they be hence dismissed with their costs in this behalf wrongfully incurred.

HUGH L. BOND, Jr.,
HENRY JACKSON,
Solicitors for Respondents.

DISTRICT OF COLUMBIA, *City of Washington:*

Reuben Foster, being duly sworn, deposes and says that he is one of the receivers of the Richmond and Danville Railroad Company, named in the foregoing answer, and that the matters and facts therein stated are true, as he verily believes.

REUBEN FOSTER, *Receiver.*

Sworn to and subscribed to before me this 5th day of August, 1893.

[SEAL OF N. P.] CHAS. P. LEE,
Notary Public.

Filing: Filed in clerk's office 7th day of Aug., 1893. O. C. Fuller, clerk.

Plea of Western Railway of Alabama.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY ET AL. } No. 526.

91 Comes the Western Railway of Alabama, by George P. Harrison, its attorney, and prays judgment of the said petition, because it says that it is an Alabama corporation, owning and operating a

line of railway from Selma, Alabama, to West Point, Georgia, and none other; that it has no interest and never has had any in the line referred to in said petition from New York or other North Atlantic ports to Newnan, Grantville, Hogansville, Lagrange, or West Point, in the State of Georgia; that it does not and never has managed, operated, or controlled said line or any part thereof; that it has never at any time charged or received any compensation whatever for the transportation of any property over said line, and this the said defendant is ready to verify.

Wherefore, inasmuch as said defendant is made a party defendant with other defendants with whom it has no connection in the management, operation, or control of the said line of railway, or other ways, from New York or other North Atlantic ports to Newnan, Grantville, Hogansville, La Grange, or West Point, in the State of Georgia, the said defendant prays judgment of the said petition, and that the same may be quashed; and if not quashed, then said defendant prays judgment if said petition ought to be answered.

GEORGE P. HARRISON,
Attorney for the Western Railway of Alabama.

STATE OF GEORGIA, *County of Fulton, ss:*

Edmond L. Tyler, being duly sworn, says that he is the general manager of the Western Railway of Alabama, one of the defendants in this proceeding, and that the facts set forth in the foregoing plea are true as therein stated, and that the same is not interposed for delay.

EDMD. L. TYLER,
Genl. Mangr.

Sworn to and subscribed before me this the 9th day of August, 1893.

[SEAL OF N. P.].

WM. W. GRANT,
Notary Public, Fulton Co., Ga.

I, George P. Harrison, counsel for the Western Railway of Alabama, do certify that in my opinion the foregoing plea is well founded in point of law.

This August 9th, 1893.

GEORGE P. HARRISON,
Attorney for Western Railway of Alabama.

Filing: Filed in clerk's office 9 day of Aug., 1893. O. C. Fuller, clerk.

92 *Answer of Atlanta & West Point Railroad Company.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY ET AL. } In equity, No. 526.

The Atlanta & West Point Railroad Company, one of the defendants in the above-stated case, reserving all rights to demurrer or objections to the foregoing petition, answering the same, saith:

That it is a corporation created, chartered, and having its principal office in the State of Georgia, as alleged in said petition.

As to the residence or method of incorporation of any of the other defendants it calls for strict proof thereof.

That it is untrue that the defendants were at the time of the acts specially mentioned, or are now, common carriers, under a common control, management, or arrangement, for the continuous carriage or shipment of persons or property through several of the United States, as specified in said petition.

This respondent saith that the proceedings set forth in said petition, consisting of the petition and answers Exhibits "A" to "G," inclusive, were had before the honorable the Interstate Commerce Commission as set forth; but this respondent denies that this defendant was thereby duly impleaded in a controversy not requiring trial by jury as provided in the seventh amendment to the Constitution of the United States.

This respondent saith that it is true that the request made in Exhibit "H" was made as stated in said petition, and that the same was denied, as stated in Exhibit "I" to said petition.

This respondent denies that at said hearing it was made to appear that the said defendants had violated the provisions of the act entitled "An act to regulate commerce" in any respect, but saith that on the trial it was made to clearly appear that the said defendants had not violated the provisions of said act.

This respondent denies that the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties, but on the contrary saith that the said Commission erroneously determined the matters and things in controversy and at issue between the said parties.

This respondent denies that the findings of fact made by the said Commission are correct, but says that the said findings of fact made by
93 the said Commission in the report alluded to are incorrect and unwarranted by the evidence produced before said Commission and by the facts of said case.

This respondent, further replying, saith: That the order Exhibit "K," made by the said Commission, is not based upon the evidence in said case and the law applicable to said evidence, but that the same is contrary both to the law and to the evidence, and should never have been made by said Commission.

This respondent denies that it has violated any provision of the interstate-commerce law, as stated in said report and order of the said Commission, but saith that it has strictly observed all of the provisions of the interstate-commerce law.

This respondent denies that the rates charged by it, as specified in said Exhibit "A" to said petition, are unreasonable or discriminative in their nature, but say that the same are reasonable and do not discriminate, and are not in violation, directly or indirectly, of section 4 of the act of Congress entitled an act to regulate commerce.

This respondent denies that the transportation of property from New York and other North Atlantic ports to Newnan, Grantville, Hogansville, La Grange, or West Point, in the State of Georgia, is made under similar circumstances and conditions with the transportation of like property to Opelika, in the State of Alabama, and calls for strict proof thereof, and is ready to prove to the contrary.

This respondent denies that in any of the matters set forth or complained of in the said petition of the said Interstate Commerce Commission, or the exhibits thereto, that it has charged or received any greater compensation in the aggregate for the transportation of like kind of property and under substantially similar circumstances or conditions for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance, as charged in said petition, and demands that strict proof be required of this charge, and is ready to prove to the contrary.

And now, having fully answered, respondent asks to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

R. E. LUTZ.

STATE OF ALABAMA, *Montgomery County:*

R. E. Lutz, being duly sworn, says that he is the traffic manager of the Atlanta & West Point Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true as he thoroughly believes.

94 Sworn to and subscribed before me this the 8th day of July, 1893.

[SEAL OF N. P.] H. C. DAVIDSON,
Notary Public, Montgomery County, Ala.

Filing: Filed in clerk's office 9 day of Aug., 1893. O. C. Fuller, clerk.

Answer of Georgia Railroad & Banking Company et al.

The joint and several answers of the Georgia Railroad & Banking Company; the Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, the last two companies being assignees of the lessee of the Georgia Railroad, to the petition filed by the Interstate Commerce Commission against the Clyde Steamship Company; the South Carolina Railway Company; the Georgia Railroad and Banking Company; the Louisville & Nashville Railroad Company, the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad; the Richmond & Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; the Atlanta & West Point Railroad Company, and the Western Railway Company of Alabama; D. H. Chamberlain, receiver; H. M. Comer, receiver; and Reuben Foster and F. W. Huidekoper, receivers; in the circuit court of the United States for the northern district of Georgia, in equity, No. 526 on the rule docket of said court.

Respondents, saving and reserving, &c., for answer unto said petition, state as follows:

I.

They suppose it to be true that the Clyde Steamship Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of South Carolina, having its principal office at Charleston, in said State of South Carolina; that the South Carolina Railway Company is a corporation created, chartered, and existing under and by virtue

of the laws of the State of South Carolina, having its principal office at Charleston, in said State of South Carolina; and that defendant, D. H. Chamberlain, is the receiver thereof; that the Richmond & Danville Railroad Company is a corporation created, chartered, and existing
95 under and by virtue of the laws of the State of Virginia, having its principal office in Washington, in the District of Columbia; and that defendants, Rueben Foster and F. W. Huidekoper, are the receivers thereof; that the Georgia Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Birmingham, in said State of Alabama; that the Atlanta and West Point Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta, in said State of Georgia; that the Western Railway Company of Alabama is a corporation created, chartered, and existing under and by virtue of the laws of the State of Alabama, having its principal office at Atlanta, in the State of Georgia.

Respondents admit that the Georgia Railroad & Banking Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Augusta, in said State of Georgia; that the Louisville & Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in said State of Kentucky; that the Central Railroad & Banking Company of Georgia is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Savannah, in said State of Georgia; and that defendant, H. M. Comer, is the receiver thereof.

II.

Respondents admit that on July 15, 1892, said corporate defendants, with the exception of the Georgia Railroad & Banking Company, were and still are common carriers, engaged, respectively, in the transportation of persons and property; that some of said corporate defendants were and are so engaged wholly by rail; that some of said corporate defendants were and are so engaged wholly by water; and that some of said corporate defendants were and are so engaged partly by rail and partly by water.

Said Louisville & Nashville Railroad Company and said Central Railroad & Banking Company of Georgia are the assignees of the lessee of the Georgia Railroad, which is the property of the Georgia Railroad & Banking Company. The Georgia Railroad & Banking Company and the Central Railroad & Banking Company of Georgia together own a majority of the capital stock of the Western Railway Company of Alabama; the Richmond & Danville Railroad Company and the Georgia Pacific Rail-
96 way Company were lessees of the Central Railroad of Georgia; but with these exceptions respondents have no knowledge, information, or belief that any of said corporate defendants were under any common control or management for continuous carriage or shipment.

Respondents have no knowledge, information, or belief that any of the corporate defendants are under any common arrangement for continuous carriage or shipment other than that by agreement between them or some of them certain through routes have been formed, over which certain through rates are charged and over which carriage or shipment is continuous under bills of lading issued by the receiving carriers. Several of such through routes have been formed by some of said corporate defendants from the city of New York and other North Atlantic ports to Atlanta, Newnan, Grantville, Hogansville, Lagrange, and West Point, in the State of Georgia, and Opelika, in the State of Alabama; and such of said corporate defendants as agreed to form said through routes are engaged as common carriers over said routes.

III.

Respondents deny that said corporate defendants were on or about January 20, 1892, duly impleaded in any kind of a controversy before said Interstate Commerce Commission, but respondent' admit that on or about January 20, 1892, L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the railroad commission of Georgia, which claims to have been duly and legally created by the laws of the State of Georgia, filed a petition in the office of said Interstate Commerce Commission; that Exhibit A to the petition filed in this case is a true copy of said petition.

Respondents admit that a copy of said petition, duly attested by the secretary of said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Commission to each of respondents, and they suppose that a copy of said petition was duly forwarded to each of their codefendants.

IV.

Respondents admit that on or about February 15, 1892, the Georgia Railroad & Banking Company filed its answer to said petition before said Interstate Commerce Commission, and that Exhibit B to the petition filed in this case is a true copy of said answer.

V.

Respondents admit that on or about February 15, 1892, the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia, as lessees of the Georgia Railroad under the
97 name of the Georgia Railroad Company, filed their joint answer to said petition before said Commission, and that Exhibit C to the petition filed in this case is a true copy of said answer.

VI.

Respondents admit that on or about February 25, 1892, the Atlanta & West Point Railroad Company filed its answer to said petition before said Commission, and that Exhibit D to the petition filed in this case is a true copy of said answer.

VII.

Respondents admit that on about Feby. 25, 1892, the Western Railway Company of Alabama filed its answer to said petition before said Commission, and Exhibit E to the petition filed in this case is a true copy of said answer.

VIII.

Respondents admit that on or about March 2, 1892, the South Carolina Railway Company, by Daniel H. Chamberlain, receiver of said company, filed its answer to said petition before said Commission, and that Exhibit F to the petition filed in this case is a true copy of said answer.

IX.

Respondents admit that on about the 25th day of March, 1892, the Central Railroad of Georgia filed its answer to said petition before said Commission, and that Exhibit G to the petition filed in this case is a true copy of said answer.

X.

Respondents admit that on about March 24, 1892, a special session of said Interstate Commerce Commission was held at the city of Atlanta, in the State of Georgia; that these respondents had due and sufficient notice of said hearing; that they appeared at said hearing by their respective officers and attorneys; and that some, if not all, of their codefendants appeared, by their officers or attorneys, at said hearing.

XI.

Respondents deny that at said hearing, or at any other time, it was made to appear to the satisfaction of said Commission that respondents had in any respect violated any of the provisions of the act to regulate commerce.

Respondents deny that said Commission duly or legally determined the matters or things in controversy or at issue between said parties.

98 Respondents admit that said Commission made a report in writing upon said matters and things, which report included certain alleged findings of fact upon which certain alleged conclusions of said Commission purported to be based; and that Exhibit J to the petition filed in this case is a true copy of said report.

XII.

Respondents admit that said Commission formulated an order and notice in relation to said matters and things which purported to be based upon the alleged findings and determinations of said Commission with respect thereto; that Exhibit K to the petition filed in this case is a true copy of said order and notice; and that said order has never been vacated, set aside, altered, modified, or changed in any respect whatever. But respondents deny that said order and notice were made agreeably to the requirements of the statute in such case made and provided, or that said order now remains in full force or effect.

XIII.

Respondents admit that on about November 11, 1892, said Commission caused a properly authenticated copy of said report and of said order and notice to be delivered to respondents, and they suppose that authenticated copies of said report and order and notice were delivered to their codefendants.

XIV.

Respondents deny that they, or either of them, have been unmindful of their duty, or of any lawful decision or determination of said Commission. They deny that they have wholly, or at all, disregarded or set at naught the lawful authority of said Commission in any regard whatever. They deny that they have wilfully, or knowingly, or at all, violated or disobeyed any lawful order or notice made or issued by said Commission.

They admit that they have declined and do still decline to comply with said alleged order made to said Commission, because, as they are advised, said order was not lawful and not binding upon them. They admit that they have not ceased or desisted from charging or receiving greater compensation in the aggregate for the transportation of property from New York and other North Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, Lagrange, and West Point, in the State of Georgia, than for the longer distance in the same direction to Opelika, in the State of Alabama; but for reasons hereinafter stated they insist that they have the lawful right to charge and receive such compensation.

99 They admit that they have not made application to said Commission for relief under the proviso clause of the fourth section of the act to regulate commerce, and the reason why they have not made such an application is that they have not done or propose to do anything which, in their opinion, requires them to make application for such relief.

Respondents are advised and insist that the said order and notice, made and issued by said Commission, was, and is, unlawful and void for the following, among other reasons:

First. The transportation of property from New York and other North Atlantic ports to Newnan, Grantville, Hogansville, Lagrange, and West Point, in the State of Georgia, is not conducted under substantially similar circumstances and condition with the transportation of property from New York and other North Atlantic ports to Opelika, in the State of Alabama.

Newnan, Grantville, Hogansville, and Lagrange, Georgia, are local stations on the Atlanta & West Point Railroad. There is no other railroad and no navigable water course at either of said places, and therefore there is no competition by either rail or water existing at any of said places.

Freight rate to said places from New York and other North Atlantic ports are arrived at by taking the rates from New York and other North Atlantic ports to Atlanta, Georgia, and adding thereto certain reasonable local rates from Atlanta to Newnan, Grantville, Hogansville, and Lagrange, respectively. Said local rates are reasonable and are approved by the railroad commission of the State of Georgia, under an act of the

legislature of that State which authorizes said commission to decide upon the reasonableness of such rates.

The through rates from New York and other North Atlantic ports to Atlanta are fixed by active competition between various lines of transportation, some of which are all rail and some of which are part water and part rail.

The Clyde Steamship Co.'s line of steamers from New York to Charleston, the South Carolina Railway from Charleston to Augusta, and the Georgia Railroad from Augusta to Atlanta form one of said part water and part rail lines. It is impossible for that line to obtain any higher through rates to Atlanta than are charged by its numerous and powerful competitors.

There is also active competition between the various lines above referred to as running from New York and other North Atlantic ports to Atlanta and certain other lines running from Cincinnati and other Ohio and Mississippi River points to Atlanta, said competition being
100 for the carriage to Atlanta of products similar to those carried there from New York and other North Atlantic ports.

Said lines running from New York and other North Atlantic ports are forced to accept rates which bear a certain relation to the rates offered on similar products by the lines running from Cincinnati and other Ohio and Mississippi River points to Atlanta.

The Georgia Railroad and its above-named connections east of Augusta divide among themselves in certain agreed proportions the through rates charged from New York and other North Atlantic ports to Atlanta; but they receive no part of the local rates charged by the Atlanta & West Point Railroad Company for transportation from Atlanta to Newnan, Grantville, Hogansville, or Lagrange. It is wholly immaterial to the Georgia Railroad and its connections east of Augusta whether freight shipped from New York and other North Atlantic ports via Atlanta stops at Atlanta or goes forward to Newnan, Grantville, Hogansville, or Lagrange.

When freights from New York and other North Atlantic ports are destined to Newnan, Grantville, Hogansville, or Lagrange, the Clyde Steamship Company issues its own through bills of lading at New York, and guarantees that the total rates to destination shall not exceed the through rates to Atlanta, added to the local rates of the Atlanta & West Point R. R. Co. from Atlanta to said points of destination, respectively; but the Clyde Steamship Company, the South Carolina Railway Company, and the Georgia Railroad do not obligate themselves, or either of them, for the continuous carriage or shipment of such freights beyond their own lines, respectively, nor do they assume to control in any way the local rates which may be charged upon such freights by the Atlanta & West Point R. R. Co.

Said Atlanta & West Point R. R. Co. declines and refuses to form a through rate, or to agree upon through rates, to its said local stations from New York and other North Atlantic ports. It receives shipments destined to such stations for the first time at Atlanta, and insist upon charging the same rates from Atlanta to destination as if said shipments had originated at Atlanta.

The Georgia Railroad is powerless to compel the Atlanta & West Point R. R. Co. to form through rates, or to agree upon through rates, to or from its local stations.

If the Georgia Railroad should be enjoined from carrying such freights at the rates which prevail from New York and other North Atlantic ports to Atlanta, such freights would be carried by some of the various lines which compete with the Georgia Railroad and its connections, or they would not be carried at all.

101 Second.—Opelika, Alabama, is situated at the intersection of the Columbus & Western Railroad with the Western Railway of Alabama. It is 29 miles distant from Columbus, Ga., and 66 miles distant from Montgomery, Ala. It is connected with Columbus by the Columbus & Western R. R., and with Montgomery by the Western Railway of Alabama.

The Apalachicola and Chattahoochee rivers are navigable from Apalachicola up to Columbus, except during a portion of the summer.

The Alabama River is navigable from Mobile to Montgomery, and two lines of steamers ply between those points.

There is direct water communication from New York and other North Atlantic ports to Montgomery via Mobile, and the New York and Mobile Steamship Company is one of the lines engaged in transportation between New York and Mobile.

There is also direct water communication from Cincinnati and other Ohio and Mississippi river points to Montgomery via New Orleans and Mobile.

There are a number of transportation lines, some of which are all rail and some of which are part water and part rail, which compete for traffic from New York and other North Atlantic ports to Columbus, Montgomery, and Opelika, respectively, and which fix the rates between said points.

The Clyde Steamship Co.'s line of steamers from New York to Charleston; the South Carolina Railway from Charleston to Augusta; the Georgia Railroad from Augusta to Atlanta; the Atlanta & West Point Railroad from Atlanta to West Point; and the Western Railway of Alabama from West Point to Montgomery, form one of said part water and part rail line. It is impossible for that line to obtain any higher rates than are charged by its numerous powerful competitors.

There is also active competition between the various lines above referred to as running from New York and other North Atlantic ports to Columbus, Montgomery, and Opelika, respectively, and other lines running from Cincinnati and other Ohio and Mississippi River points to Columbus, Montgomery, and Opelika, respectively; said competition being for the carriage to Columbus, Montgomery, and Opelika, respectively, of products similar to those carried there from New York and other North Atlantic ports.

Said lines running from New York and other North Atlantic ports are forced to accept rates which bear a certain relation to rates offered

102 on similar products by the lines running from Cincinnati and other Ohio and Mississippi points to Columbus, Montgomery, and Opelika, respectively.

The Georgia Railroad and its above-named connections are compelled to accept the rates fixed by competition, as aforesaid, from New York

and other North Atlantic ports to Opelika, or abandon the traffic to the rival lines.

West Point, Georgia, is the western terminus of the Atlanta & West Point Railroad and the eastern terminus of the Western Railway of Alabama. It is only 22 miles distant from Opelika, and therefore the rates to West Point can not be made to exceed the through rates to Opelika, added to reasonable local rates from Opelika to West Point; but as the pressure of competition is not as great at West Point as at Opelika, the rates to West Point are somewhat higher than to Opelika.

While the proportions which the Georgia Railroad and its said connections receive of such through rates to Opelika and West Point are small, yet they are more than the additional cost of transporting such traffic; and it is therefore to their interest, as well as to the interest of the public, that they should remain in the field as a competitor for such traffic.

But it would be impossible for the Atlanta & West Point Railroad or the Western Railway of Alabama to earn operating expenses if they were compelled to carry all of their traffic at rates as low as the proportions which they are respectively compelled to accept of the through rates from New York and other North Atlantic ports to Opelika, or as the Atlanta & West Point R. R. Co. is compelled to accept of the through rates from New York and other North Atlantic ports to West Point; and if the order made by the Commission in this case should be enforced, those companies would be forced to abandon the Opelika and West Point through rates and adhere to the present local rates to Newnan, Grantville, Hogansville, and La Grange. The result would not benefit the last-mentioned points at all. The Georgia Railroad and its connections would lose the Opelika and West Point traffic. Opelika and West Point would lose the competition of Georgia Railroad and its connections, but no one would be benfited in the least.

And having fully answered, respondents pray to be hence dismissed with their reasonable costs, etc.

JOS. B. CUMMING,
ED. BAXTER,
Solicitors for Respondents.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
[L. & N. SEAL.] By M. H. SMITH, *President.*
Attest: J. H. ELLIS, *Secretary.*

103 STATE OF KENTUCKY, *Jefferson County:*

Personally appeared before me, G. W. B. Olmstead, a notary public duly appointed, commissioned, and qualified in and for the State and county aforesaid, M. H. Smith and J. H. Ellis, who are, respectively, the president and secretary of the Louisville & Nashville Railroad Company, the above-named respondent, and signed the foregoing answer, and affixed thereto the seal of said company, as the answer of said company.

Witness my hand and notarial seal of office, at Louisville, Ky., this 8th day of August, 1893.

[N. P. SEAL.] G. W. B. OLMSTEAD,
Notary Public.

Filed in clerk's office 10' day of August, 1893. O. C. Fuller, clerk.

* * * * * * *

105 *Stipulation as to depositions of Fuller E. Callaway, E. R. Bradfield, sr., W. V. Gray, and C. V. Truitt.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company et al. } In equity, No. 526.

In the above-entitled cause it is stipulated and agreed by counsel for the complainants and counsel for the defendants that the depositions of the following-named witnesses for the complainant, to wit, Fuller E. Callaway, E. R. Bradfield, sr., W. V. Gray, and C. V. Truitt, of La Grange, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories and may be read in evidence on the hearing of counsel for the complainant and by counsel for the defendants that the depositions of the following-named witnesses for the complainant, to wit, Fuller E. Callaway, E. R. Bradfield, sr., W. V. Gray, and C. V. Truitt, of La Grange, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived.

It is further stipulated and agreed that E. R. Bradfield, jr., of La Grange, Ga., may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for the Defendants, as of Record.

106 Filing: Filed in clerk's office 12' day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Interrogatories to Fuller E. Callaway, E. R. Bradfield, sr., W. V. Gray, and C. V. Truitt.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company et al. } In equity, No. 526.

Interrogatories filed in the above-entitled cause on behalf of the complainant therein, and to be exhibited to Fuller E. Callaway, E. R. Bradfield, sr., W. V. Gray, and C. V. Truitt, of La Grange, Georgia.

Interrogatory No. 1. What is your name and residence, and in what occupation and business are you engaged?

Interrogatory No. 2. If you say you reside at La Grange, Ga., state how long that place has been your residence and how long you have been engaged in business there and in what business.

Interrogatory No. 3. State whether merchants of Opelika, Ala., sell goods and do business at La Grange, West Point, Hogansville, Grantville, and Newnan, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond La Grange from Opelika at which Opelika merchants sell goods or do business, and state how far such points are from or beyond La Grange, and whether goods in order to reach such points from Opelika have to be hauled through La Grange, and over what road.

107 Interrogatory No. 5. State whether merchants of Lagrange attempt to sell goods and do business at such points in territory around and beyond Lagrange, and whether in doing so they come in competition with merchants of Opelika.

Interrogatory No. 6. State whether Lagrange merchants can successfully compete with Opelika merchants in selling goods and doing business at Lagrange, and in territory around and beyond Lagrange.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Lagrange merchants are placed at a disadvantage in this competition with Opelika merchants, state what this disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this disadvantage results from a discrimination in rates in favor of Opelika and against Lagrange, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination in favor of Opelika has existed, and what effect, if any, it has had in retarding the growth of Lagrange.

Interrogatory No. 10. State whether Lagrange merchants buy their goods from Opelika or direct from New York and other Eastern cities, or other sources of supply, and when goods are bought in New York and other Eastern cities, whether they are shipped to Lagrange under a through bill of lading, naming a through rate to Lagrange, and whether goods from New York and other Eastern cities, after reaching Charleston, are hauled through to Lagrange without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Lagrange.

Interrogatory No. 12. Are there any other railway lines or
108 roads reaching Lagrange besides the Atlanta & West Point Railroad? If so, state whether such other lines or roads have connections with roads leading to or from New York and other Eastern cities. Name such lines and connections.

Interrogatory No. 13. Do transportation rates or charges enter into and affect the prices at which yourself and other Lagrange merchants can sell goods to consumers in and around Lagrange?

Interrogatory No. 14. How would a reduction in the rates on goods of all classes from New York and other Eastern cities to Lagrange, West Point, Hogansville, Grantville, and Newnan, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Lagrange, West Point, Hogansville, Grantville,

and Newnan could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 15. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 16. Will a reduction in the rates on all classes of goods from New York and other Eastern cities to Lagrange, West Point, Hogansville, Grantville, and Newnan, so as to make the rates to those points not higher than the rates from New York and other Eastern cities to Atlanta, increase or diminish the tonnage of traffic which will be hauled by the roads to Lagrange, West Point, Hogansville, Grantville, and Newnan? Give your reasons for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 17. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 18. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

109 Interrogatory No. 19. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED BAXTER,
Solr. for Defl. as of Record.

Answers of Fuller E. Callaway.

INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE ATLANTA & WEST POINT R. R. Co., et al.

The witness, Fuller E. Callaway, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

1. Fuller E. Callaway, Lagrange, Ga.; merchant.

2. I reside in Lagrange, Ga. It has been my residence for 27 years (all my life). Have been engaged in mercantile business here for nine years for my own account.

3. Merchants of Opelika do business with the small merchants in Lagrange and adjacent country territory. As for the other points, I know nothing.

4. Merchants of Opelika sell goods to country merchants near and beyond Lagrange and ship by Western Ry. of Ala. and Atlanta and

West Point Ry. to Lagrange, where country merchant takes them in wagons. These points range from 5 to 20 miles beyond Lagrange.

5. Yes. Lagrange merchants attempt to compete with Opelika merchants around and beyond Lagrange.

6. No. They are at a disadvantage.

7. Because Lagrange, Ga., is discriminated against in freight rate.

8. Example: I take 1st class rate of freight in example below; all others are in proportion. Opelika, Ala., merchants ship first-class freight from New York City through Lagrange, Ga., to Opelika, Ala., for $1.14 per 100 lbs. The Western Railway of Alabama and Atlanta & West Point Railway haul 1st-class freight from Opelika, Ala., to Lagrange, Ga., for 32c. per 100 lbs. This makes a total rate on first-class freight from New York City to Opelika, Ala., and then hauled back to Lagrange, Ga., at $1.46 per hundred pounds, while the said carriers charge and collect the sum of $1.53½ per hundred pounds to haul 1st-class freight from New York City to Lagrange. In doing this the carriers haul first-class freight 38 miles beyond Lagrange, Ga., and haul it back to Lagrange, Ga., for 7½c. per 100 lbs. less than they will stop at Lagrange, Ga. This enables the Opelika merchant to ship his goods from New York City through Lagrange, Ga., to Opelika, Ala., 38 miles beyond, and then reship back to Lagrange, Ga., at 7½c. per hundred pounds less (on first-class freight) than the Lagrange merchant can ship them direct from New York City to Lagrange, Ga. This enables the Opelika, Ala., merchant to undersell the Lagrange, Ga., merchant at their front door 7½c. per hundred lbs. (on first-class freight) and make the same profit.

9. It is existing as above, now, and has existed in different degrees for the past nine years. It has retarded the growth of Lagrange, Ga.

10. The larger Lagrange merchants buy their goods in New York and other supply markets. Goods are shipped from New York City to Lagrange, Ga., on a through bill of lading with a through rate inserted in same. I don't know whether goods are transferred from one car to another between Charleston, S. C., and Lagrange, Ga.

11. About 5,000 population now. Lagrange has 2 cotton mills, oil mill, foundry, creamery, planing mills, buggy and carriage factories, guano factory, and other small industries, and 30 or 40 mercantile houses, &c.

12. Yes. The Macon and Birmingham Railroad has its western terminal at Lagrange, Ga., at present; it connects at Macon, Ga., for New York with several lines—1st, with Central of Georgia, to Athens, Ga., there with Seaboard Air Line to Norfolk, then with Old Dominion Steamship Co. for New York. 2nd, with Central of Ga. Macon to Savannah, Ga., there with Ocean Steamship Co. to New York. 3rd, with Georgia Railroad to Augusta, Ga., there with S. C. and Ga. R. R. to Charleston, S. C., then with Clyde Line to N. Y. 4th, with Georgia R. R. to Augusta, Ga., there with Atlantic Coast Line and its connections to New York, and one or two other connections at Macon, Ga., to New York City.

13. Yes. Considerably.

14. Such reduction in rates would lower the prices of goods.

15. Low prices increase sale and consumption of goods. High prices

curtail sale and consumption of goods. More goods are sold to consumer when goods are cheap.

16. It would increase the tonnage, because it would enable us to sell goods cheaper; consequently, sell more.

17. It has the effect of increasing the population, wealth, and general welfare of the locality.

18. It has just the opposite effect to my answer to preceding question.

19. I know nothing else. The facts in the preceding answers are "a plenty."

FULLER E. CALLAWAY.

Answers of C. V. Truitt.

The witness, C. V. Truitt, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

1. C. V. Truitt, LaGrange, Ga.; supply merchant.

2. I have lived in LaGrange, Ga., for 20 years, and have been engaged in supply business for 15 years.

3. They do.

4. Louise, Mountville, Odessa, Hogansville. From 7 to 15 miles beyond LaGrange from Opelika. Yes, goods have to be hauled through LaGrange and over Atlanta and West Point and Macon & Birmingham R. Rs.

5. They make the attempt at the points named, except Hogansville, and they do come in competition with merchants of Opelika.

6. No, they can not compete with them.

7. Discrimination of R. R. rates in favor of Opelika.

8. I can not give the exact rates, but know from my own experience that the discrimination does exist.

9. It has existed for six or eight years, and of course places LaGrange at a great disadvantage.

10. The bulk of the goods are bought in New York and shipped to LaGrange on a through bill of lading, sometimes direct to LaGrange and sometimes via Charleston without breakage of bulk.

11. LaGrange is a city of about 5,000 people. It has 2 cotton mills, grist mill, carriage factory, oil mill, foundry, planing factory, &c.

112 12. There is another, the "M. & B," but I do not know its connections.

13. Yes, it certainly does.

14. It would necessarily make the prices lower.

15. The lower the prices the more goods are sold.

16. It would increase the tonnage of traffic, for when goods are cheap we can sell more, and, consequently, would have to buy more.

17. Low rates naturally promote all the interests you mention.

18. It has just the opposite from that just mentioned.

19. I know nothing further of any benefit.

C. V. TRUITT.

Answers of W. V. Gray.

The witness, W. V. Gray, being sworn to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

1. My name is W. V. Gray, and I reside at LaGrange. Am a merchant.

2. I have resided here for 22 years, and have been in business all that time.

3. Opelika does business with the points you name.

4. I know that they keep agents on the A. & W. P. R. R. for the purpose of selling goods at points around and beyond LaGrange; Hogansville, Newnan, Grantville, Whitfield, are among the points that are solicited by the Opelika agents.

5. They make the attempt, but are not able to compete with the Opelika merchants on account of their getting so much lower rates.

6. No, they can not.

7. From a discrimination on freight rates in favor of Opelika, enabling them to buy and sell goods cheaper than LaGrange.

8. Opelika merchants can get goods laid down at their own town and reship to LaGrange for less than original LaGrange rates.

9. As long as I have lived in LaGrange—for 22 years—it has badly handicapped LaGrange in drawing her trade from her.

10. A part of LaGrange's goods are bought in Opelika and a part are bought in East. They are not hauled from New York over other Eastern cities without breakage of bulk and in the same cars in which originally loaded.

113 11. The population is about 5,000. There are between forty and fifty business houses, 2 cotton factories, and one adjacent cotton factory, granary factory, oil mills, grist mills, &c.

12. The Macon and Birmingham from LaGrange to Macon is a new road just completed to LaGrange, but I do not know its connections.

13. Yes, they do.

14. It would lower the prices of LaGrange and enable her to compete with other places.

15. More goods are sold when prices are low, and a place has much more life and growth when it has a good market and gets the reputation of selling goods cheap.

16. It would greatly increase the tonnage of traffic by enabling us to offer goods for less, and consequently sell and buy more.

17. Low rates and its consequent low prices has a tendency to stimulate trade and build up the town, and this effect naturally attracts capital and increases the population.

18. It has a contrary effect from that given in preceding answers.

19. I know nothing further.

W. V. GRAY.

Answers of E. R. Bradfield.

The witness, E. R. Bradfield, being sworn to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

1. My name is E. R. Bradfield; residence, LaGrange; occupation, merchant.

2. I have been a resident of LaGrange forty-five years; have been in D. G. business for twenty-five years.

3. They do.

4. Hogansville, Mountville, Antioch, Houston, Franklin, and other small towns near LaGrange at a distance of five to twenty miles. Goods are shipped to these point' over A. & W. P. and W. of Ala.

5. Merchants of LaGrange do a jobbing business and come in competition with merchants of Opelika.

6. They can not unless they are put on an equal footing with merchants of Opelika.

7. On account of discrimination against them in freight rates.

8. Opelika merchants can haul goods to their own town and reship back to LaGrange for less than LaGrange can get them.

114 9. This discrimination has been going on for ten or fifteen years in different degrees, and has retarded the growth of LaGrange very much.

10. LaGrange merchants buy their goods from New York, Phil., and other supply markets naming a through rate. I do not know whether they are transferred in transit or not.

11. Population about 5,000; forty or fifty merchants; six or eight manufacturing enterprises.

12. It has one other R. R. besides the A. & W. P., which has connection with New York at Macon.

13. It does.

14. A reduction in rates would lower the price of goods.

15. Low prices increase sales.

16. It would increase the tonnage to LaGrange, for we would sell more goods than we do.

17. It has a very beneficial effect on the town.

18. It has just the opposite effect.

19. I know nothing further of benefit.

E. R. BRADFIELD.

I, E. R. Bradfield, jr., of LaGrange, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me said witnesses, to wit, Fuller E. Callaway, C. V. Truitt, W. V. Gray, E. R. Bradfield, sr., and having duly sworn them to speak the truth, the whole truth, and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This 2nd day of September, 1897.

E. R. BRADFIELD, JR., *Commissioner.*

(Indorsed on envelope:) To O. C. Fuller, clerk of the cir. ct. of the United States for the northern district of Georgia, Atlanta, Georgia. Atlanta, Ga. Received by due course of mails this 2 day of Sep., 1897. Amos Fox, P. M. Received from the hands of the postmaster at Atlanta, Ga., and filed this 3 day of Sept., 1897. O. C. Fuller, clerk.

115 *Stipulation as to deposition of S. T. Whitaker, L. S. Turner, J. S. Baker, and Z. Hagedorn.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company et al.
} In equity, No. 526.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions of the

following-named witnesses for the complainant, to wit, S. T. Whitaker, L. S. Turner, J. S. Baker, and Z. Hagedorn, of West Point, Georgia, may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived.

It is further stipulated and agreed that B. H. Hill, esq., of West Point, Georgia, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for Defendants, as of record.

Filing: Filed in clerk's office 12 day of Aug., 1897. O. C. Fuller, clerk; by J. D. Steward, deputy.

Interrogatories to S. T. Whitaker, L. S. Turner, J. S. Baker, and Z. Hagedorn.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, et al.
} In equity, No. 526.

116 Interrogatories filed in the above-entitled cause on behalf of the complainant therein and to be exhibited to S. T. Whitaker, L. S. Turner, J. S. Baker, and Z. Hagedorn, of West Point, Georgia:

Interrogatory No. 1. What is your name and residence, and in what occupation or business are you engaged?

Interrogatory No. 2. If you say you reside at West Point, Ga., state how long that place has been your residence, and how long you have been engaged in business there and in what business.

Interrogatory No. 3. State whether merchants of Opelika, Ala., sell goods and do business at West Point, Lagrange, Hogansville, Grantville, and Newnan, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond West Point from Opelika at which Opelika merchants sell goods or do business, and state how far such points are from or beyond West Point, and whether goods in order to reach such points from Opelika have to be hauled through West Point and over what road.

Interrogatory No. 5. State whether merchants of West Point attempt to sell goods and do business at such points in territory around and beyond West Point, and whether in doing so they come in competition with merchants of Opelika.

Interrogatory No. 6. State whether West Point merchants can successfully compete with Opelika merchants in selling goods and doing business at West Point, and in territory around and beyond West Point.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you

state that West Point merchants are placed at a disadvantage in this competition with Opelika merchants, state what this disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this advantage results from a discrimination in rates in favor of Opelika against West Point, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

117

Interrogatory No. 9. State how long this discrimination in favor of Opelika has existed, and what effect, if any, it has had in retarding the growth of West Point.

Interrogatory No. 10. State whether West Point merchants buy their goods from Opelika or direct from New York and other Eastern cities or other sources of supply, and when goods are bought in New York and other Eastern cities, whether they are shipped to West Point under a through bill of lading, naming a through rate to West Point, and whether goods from New York and other Eastern cities after reaching Charleston are hauled through to West Point without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of West Point.

Interrogatory No. 12. Do transportation rates or charges enter into and affect the prices at which yourself and other West Point merchants can sell goods to consumers in and around West Point?

Interrogatory No. 13. How would a reduction in the rates on goods of all classes from New York and other Eastern cities to West Point, Lagrange, Hogansville, Grantville, and Newnan, so as to make the rates to those points not higher than the rates to Opelika and Atlanta, affect the prices at which merchants at West Point, Lagrange, Hogansville, Grantville, and Newnan could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 14. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

118

Interrogatory No. 15. Will a reduction in the rates on all classes of goods from New York and other Eastern cities to West Point, Lagrange, Hogansville, Grantville, and Newnan, so as to make the rates to those points not higher than the rates from New York and other Eastern cities to Opelika and Atlanta, increase or diminish the tonnage of traffic which will be hauled by the roads to West Point, Lagrange, Hogansville, Grantville, and Newnan? Give your reasons for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 16. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 17. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have upon its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at

issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:
Cross-examination waived.

ED. BAXTER,
Solr. for Defts. as of Record.

Answers of Z. Hagedorn.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA and West Point R. R. Company, et al. } In equity, No. 526.

119 The witness, Zach. Hagedorn, being sworn to speak the truth, the whole truth, and nothing but the truth in answering attached interrogatories, doth depose as follows:

Int. No. 1. My name is Zach. Hagedorn. I live in West Point. Am one of the firm of J. J. Hagedorn & Co., and am engaged in the wholesale and retail dry goods, clothing, furniture, and shoes, as well as every other branch of necessary and useful merchandise.

Int. No. 2. I have lived in West Point, Ga., about 26 years, and have been engaged in the business aforesaid the number of years mentioned.

Int. No. 3. Yes. Merchants of Opelika, Ala., do business in the territory tributary to West Point. Am not convinced whether or not they do business in the towns mentioned.

Int. No. 4. Yes. Merchants of Opelika ship some classes of merchandise to this place and beyond to Gabbettsville, Lagrange, Hogansville, and Grantville almost daily. The distance of such points mentioned from West Point is about 6, 15, 30, and 38 miles, respectively. Shipments thus made must go through West Point and over the W. R. R. of Ala. and the A. & W. P. R. R. Opelika merchants also ship to all intermediate points on the Central of Ga. R. R. from Opelika to Roanoke, including the towns of Lafayette and Roanoke. They also ship goods to Cusseta, Ala., on the W. R. R. of Ala., which station is 10 miles south of West Point.

Int. No. 5. Merchants in West Point, Ga., can not in many lines of merchandise compete successfully with merchants of Opelika, on account of discrimination in freight rates in favor of Opelika.

Int. No. 6. If purchasing and selling prices are equal, West Point merchants can not compete successfully with Opelika merchants, on account of aforesaid discrimination of freight rates in favor of Opelika.

Int. No. 7. The disadvantage results from the difference in freight rates in favor of Opelika.

Int. No. 8. For example, I state that the 1st-class rate of dry goods and other merchandise from New York and other Eastern points to

West Point, Ga., is $1.42 per cwt.; to Opelika from the same points the rate is $1.14 per cwt., a difference of 28 cts. per cwt. in favor of Opelika.

Int. No. 9. To the best of my knowledge this discrimination in favor of Opelika has existed about 10 years. It has been hurtful to the trade and growth of West Point ever since.

Int. No. 10. West Point merchants do not buy their goods from Opelika, but direct from New York and other Eastern and
120 Western centers of trade under through bills of lading, naming a through rate to West Point thereon. I do not know whether or not goods are reloaded or transferred after leaving Charleston in bulk from cars in which they were originally loaded.

Int. No. 11. The population of West Point and suburbs is estimated at about 6,000. There are many mercantile establishments here of all kinds, some of which are of considerable importance. In Lanette, a suburb of West Point, also Langdale and Galeton, suburbs of West Point, are three large cotton mills, running about 48,000 spindles. We also have iron works, a foundry, an oil mill, and various other manufacturing interests. We have waterworks, and our city is lighted by electricity.

Int. No. 12. It does.

Int. No. 13. Lower rates to points named equal to rates to Opelika and Atlanta would enable merchants of West Point to sell their goods equally as cheap as Opelika. Such reduction would lower prices.

Int. No. 14. Prices of goods affect their sale and consumption, inasmuch as when goods are high people can and do buy only necessary articles, while when goods are cheaper the demand, supply, and consumption is in proportion to the price.

Int. No. 15. A decrease in rate will increase the tonnage of traffic for reasons stated in the foregoing, or 14th, int.

Int. No. 16. Relatively low or preferential rates to a locality have a tendency to increase the population of such localities and induce investment of capital there and promote prosperity in said locality in other respects.

Int. No. 17. The effect of high or discriminating rates to a locality have a tendency to retard the growth of such locality, reduce real-estate values, increase taxes, diminish population, and are otherwise harmful in many respects.

Int. 18. Yes. It is a fact that the discriminating rates have caused many of our merchants to be less prosperous than they would have been. For example, the section of the country between West Point and Opelika, known as the Cusseta district, formerly gave all of its trade to West Point, and we have examples almost daily of the effect of the lower rate in favor of Opelika, hence our losses. I also state that the rate given to the Opelika makes it a better cotton market, therefore looses to West Point the marketing of a great deal of cotton from a country or section directly tributary to West Point.

Z. HAGEDORN. [L. S.]

Sworn to and subscribed before me this 13th day of Sept., 1897.

[SEAL OF N. P.]

B. H. HILL,
N. P. and Commissioner.

121 *Answers of Jas. S. Baker.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA AND West Point R. R. Company, et al.
} In equity, No. 526.

The witness Jas. S. Baker, being duly sworn to speak the truth, the whole truth, and nothing but the truth, in answering the attached interrogatories, doth depose as follows:

Int. No. 1. My name is James S. Baker; I live in West Point, Ga.; my business is that of merchandising.

Int. No. 2. I was born in West Point, Ga., in Oct., 1844, and have lived here since that time. Have been merchandising 31 years.

Int. No. 3. They do business here and in surrounding towns.

Int. No. 4. Gabbettsville, 6 miles; Lagrange, 16 miles; Hogansville, 28 miles. Goods from Opelika to above points have to be hauled through West Point over the W. R. R. of Ala. and the A. & W. P. R. R.

Int. No. 5. They do not attempt to sell goods at such railroad points as named above, as the difference in rates prohibit.

Int. No. 6. They can not.

Int. No. 7. Results from discrimination in rates in favor of Opelika.

Int. No. 8. First-class rates from New York, Philadelphia, and other Eastern points to Opelika are $1.14 per cwt., and to West Point from same points $1.42 per cwt. On flour from Ohio River points to Opelika the rate is 52 cts. per bbl.; to West Point the rate is 69½ cts. per bbl. The rate on bacon from Chicago to Opelika is 45 cts. per cwt.; to West Point 63 cts. per cwt. On corn from Louisville, Ky., and Henderson, Ky., and Cincinnati, Ohio, to Opelika, 26 cents per cwt.; to West Point from same points 34 cts. per cwt. Rates on fertilizers from Charleston and Savannah to Opelika $3.00 per ton; to West Point from same points $3.25 per ton, and most of the fertilizers from Charleston and other Carolina points pass through West Point to Opelika.

Int. No. 9. Since soon after the appointment of Interstate Railroad Commission. To say how much it has retarded the growth of the town I can't, but the discrimination has affected the business interests very much.

122 Int. No. 10. We buy some goods in Opelika. Most of our larger houses, however, buy them direct from New York and other cities, and they are shipped to us on through bills of lading with through rates, and I have saved some money, a few times, by having goods shipped to Opelika and then having them reshipped to West Point. Most of our goods come to Charleston by steamer, and of course are transferred to cars and brought thence to West Point.

Int. No. 11. The commercial population is about 6,000. We have a number of the best mercantile firms in Georgia, with a sufficient capital to do a large business if they had as low rates of freight as their neighboring town Opelika. We have three large cotton factories that run about 48,000 spindles, an oil mill, foundry, machine shop, bleachery, and

dye works, roller-covering works, and several other manufacturing establishments.

Int. No. 12. They do not.

Int. No. 13. Rates to West Point equal to Opelika and Atlanta would enable us to give the consumer the difference in said rates in the price of goods which they purchase.

Int. No. 14. That depends on the price the farmers and other laborers get for their products and labor. If their products and labor bring good prices, they buy as many goods when high as when cheap.

Int. No. 15. It would increase the tonnage to West Point largely, and I believe would to the other towns mentioned. If we get lower rates here, we will sell very many more goods.

Int. No. 16. Relatively low or preferential rates has a tendency to invite manufacturing and all other business interests, which, of course, increase the population and promote the prosperity of such localities in very many respects.

Int. No. 17. High rates to a locality drives off business and manufacturing interests, and thereby prevent an increase in population.

Int. No. 18. Yes. The difference in rates to Opelika and West Point is so much that it pays our farmers to haul goods from Opelika in wagons. Opelika merchants draw trade from within four miles of our town on account of said difference in prices caused by lower rates. The farmers say that it pays them to haul their cotton that distance and buy their goods from Opelika merchants on account of aforesaid difference in prices. Before this discrimination in rates we were selling goods to people who lived within about four miles of Opelika.

J. S. BAKER. [L. S.]

Sworn to and subscribed before me this 13th day of Sept., 97.

B. H. HILL,
N. P. & Commissioner.

123 *Answers of S. T. Whitaker.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA and WEST POINT R. R. Company, et al.
In equity, No. 526.

The witness, S. T. Whitaker, being duly sworn to speak the truth, the whole truth, and nothing but the truth, in answering attached interrogatories, doth depose as follows:

Int. No. 1. My name is S. T. Whitaker. I live in West Point, Ga. Am cashier of the Bank of West Point.

Int. No. 2. Have been living in West Point all my life. Have been in the mercantile business 22 years.

Int. No. 3. Yes.

Int. No. 4. Lagrange, Hogansville, Grantville, Moreland, and Newnan, Ga., on the Atlanta and West Point R. R. Hauled through West Point on W. R. R. of Ala. and A. & W. P. R. R. Aforesaid places being situated 16, 30, 35, and 40 miles, respectively, from West Point.

Int. No. 5. They do not, being debarred on account of freight rates from Opelika.

Int. No. 6. They can not.

Int. No. 7. Discrimination in rates of freight in favor of Opelika.

Int. No. 8. For example, the rate on flour from Ohio River points, in bbls., is 52 cts. per bbl. to Opelika; to West Point, 69½ cts. per bbl., making a difference of 17½ cts. in favor of Opelika, which is a fine wholesale profit.

Int. No. 9. To the best of my knowledge, about 15 years. Can't say to what extent it has retarded the growth of West Point, but would think a conservative estimate would be at least 40%, as it has simply run all jobbers and wholesale merchants out of the town, and hampered the manufacturing interest to such an extent that new capital will not invest in that line. It has also hurt the price of real estate in proportion.

Int. No. 10. They do not, but buy direct from New York, and other Eastern and Western cities. They are shipped to West Point under a through bill of lading, on a through rate, and come through without transfer in carload lots.

Int. No. 11. The commercial of West Point is from five to six
124 thousand. It does a business of $1,000,000 in a mercantile way.

It has a large oil mill, machine shop, foundry, electric light plant, water works, three large cotton mills, running about 48,000 spindles. Her manufacturing interests would foot up at least $3,000,000 per annum.

Int. No. 12. It does.

Int. No. 13. Rates to West Point not higher than those to Opelika and Atlanta would enable merchants here to lower their prices, and thereby enable them to meet competition.

Int. No. 14. My experience and opinion in regard to this matter is that low prices increase the sale of goods, and therefore the profit and consumption.

Int. No. 15. It would increase the tonnage simply from the fact that merchants in the towns named would reach out across the country and draw new trade, and home people would consume more goods at a cheaper price, thereby increasing the tonnage of freights.

Int. No. 16. Cheap freight rates draw trade, and a thrifty town attracts people. Cheap freights draw manufacturing interests, for the reason that a good rate is the first thing considered in locating a manufacturing plant.

Int. No. 17. Discrimination in freight rates hamper and retard progress in every line.

Int. No. 18. Yes. A competitive freight rate would build up our town, make us a prosperous business center, thereby increasing our tonnage to such an extent that it would more than compensate the railroads for the loss in reducing rates.

S. T. WHITAKER. [L. S.]

Sworn to and subscribed before me this 13th day of Sept., /97.

[SEAL OF N. P.]

B. H. HILL,
N. P. and Commissioner.

Answers of Luther Turner.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA and West Point R. R. Company, et al.
} In equity, No. 526.

The witness, Luther S. Turner, being duly sworn to speak the truth, the whole truth, and nothing but the truth, in answering attached interrogatories, doth depose as follows:

125 Int. No. 1. My name is Luther S. Turner. I reside in West Point, Ga. I sell hardware and groceries.

Int. No. 2. I have resided in West Point 25 years, and have been in aforesaid business 22 years.

Int. No. 3. They do business in West Point and LaGrange, also in territory around said town.

Int. No. 4. They do business at Cusseta, which is about 10 miles south of West Point, and at LaFayette, about 20 miles, and Roanoke, about 41 miles; Camp Hill, 30 miles, and at Salem, which is about 32 miles from West Point, and other intermediate points which could be mentioned. Goods are hauled to Opelika through West Point, and then sold to West Point and LaGrange merchants, and then shipped back to them from Opelika.

Int. No. 5. They do not.

Int. No. 6. They can not successfully compete with Opelika merchants.

Int. No. 7. From discrimination in freight rates in favor of Opelika.

Int. No. 8. Opelika has a 1st-class rate of freight from New York, Boston, Philadelphia, and Providence at $1.14; 2nd class, 98; 3rd class, 86; 4th class, 73; 5th class, 60, and 6th class, 49 cts. per cwt.; and from Baltimore, 1st class, $1.07; 2nd class, 92; 3rd class, 81; 4th, 68; 5th, 56, and 6th, 46 cts. per cwt.

West Point's rate from New York, Boston, Philadelphia, and Providence is, 1st class, 1.42; 2nd class, 1.24; 3rd, 1.10; 4th, 93; 5th, 77, and 6th, 62 cts. per cwt. The rate from Baltimore to West Point, 1st class, is 1.35; 2nd, 1.18; 3rd, 1.05; 4th, 88; 5th, 73, and 6th, 59 cts. per cwt.

Rates of freight from Cincinnati, Ohio, Newport, and Lexington, Ky., to Opelika is, 1st class, 1.17; 2nd, 1.02; 3rd, 91; 4th, 76; 5th, 63, and 6th, 52 cts. per cwt. From Louisville, Ky., Evansville and Mt. Vernon, Ind., to Opelika, 1st-class rate, 1.07; 2nd, 92; 3rd, 81; 4th, 68; 5th, 56, and 6th, 46 cts. per cwt. From St. Louis, Mo., and Bellville, Ill., 1st class, 1.35; 2nd, 1.15; 3rd, 1.01; 4th, 82; 5th, 68, and 6th, 56 cts. per cwt. From Nashville, Tenn., to Opelika, 1st class, 72; 2nd, 62; 3rd, 56; 4th, 46; 5th, 38; 6th, 33 cts. per cwt. To West Point from Cincinnati, New York, and Lexington, 1st-class rate is 1.35; 2nd, 1.18; 3rd, 1.05; 4th, 88; 5th, 73, and 6th, 59 cts. per cwt. From Louisville, Ky., Mt. Vernon and Evansville, Ind., to West Point the 1st-class rate is 1.35; 2nd, 1.18; 3rd, 1.05; 4th, 88; 5th, 73, and 6th, 59 cts. per cwt. To West Point from St. Louis, Mo., and Bellville, Ill.,

the 1st-class rate is 1.63; 2nd, 1.41; 3rd, 1.25; 4th, 1.02; 5th, 85, and 6th, 69 cts. per cwt. To West Point from Nashville, 1st-class rate is 1.00; 2nd, 88; 3rd, 80; 4th, 66; 5th, 55, and 6th, 46 cts. per
126 cwt. All goods go through West Point to Opelika, which is 22 miles beyond West Point.

Int. No. 9. It has existed for 10 or 12 years and has retarded the growth of West Point very materially.

Int. No. 10. The merchants of West Point buy some goods from Opelika merchants. The goods shipped from New York and other Eastern cities are shipped on through bill of lading and arrive in West Point in cars in which they were originally loaded.

Int. No. 11. The population of West Point and suburbs is about 6,000. The merchants of West Point do annually a business of about $1,000,000.00. Our factories run 48,000 spindles and consume daily 90 bales of cotton. We have an oil mill with a capacity of 30 tons per day. Foundry, machine shop, bleachery, and dye works, and various other enterprises.

Int. No. 12. They do very materially.

Int. No. 13. It would reduce prices very materially.

Int. No. 14. My experience and opinion is that we sell a great many more goods when cheap than when high.

Int. No. 15. It would increase the tonnage considerably if we had such rates as Atlanta and Opelika.

Int. No. 16. Low rates would increase our business, which would naturally demand more capital and more people.

Int. No. 17. It retards all progress, prevents people with capital from coming to such cities, keeps real estate cheap, and measurably cuts off communication with the commercial world.

Int. No. 18. Yes; New Orleans ships goods to Opelika, Ala., on a 1st-class rate of 18 cts. per cwt. on coffee, 24 cts. on sugar and molasses. The rates from New Orleans to Atlanta is on coffee 31, sugar 31, and molasses 36 cts. per cwt. The rate to West Point from New Orleans is, on coffee, 55 cts.; sugar and molasses, 46 cts. per cwt. Opelika has had a "special" rate to West Point, so that she could sell her goods to West Point merchants, which was very damaging to them, but since this suit this special rate has been withdrawn. Opelika has a rate on domestic coal from Group No. 1 of ..... per ton, Atlanta, $1.05 per ton, and West Point pays a rate from the same point and the same coal of $1.25 per ton.

L. S. TURNER. [L. S.]

Sworn to and subscribed before me this 13th day of Sept., /97.

[SEAL OF N. P.]

B. H. HILL,
N. P. & Commissioner.

I, B. H. Hill, commissioner, named in the stipulations attached to the interrogatories herein, do certify that I called before me said
127 witnesses, to wit, S. T. Whitaker, Jas. J. Baker, Zach. Hagedorn, and L. S. Turner, and after having duly sworn them to speak the truth, the whole truth, and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a

full, true, and correct report of the testimony given by each of said witnesses.

This the 13th day of September, 1897.

B. H. HILL, *Commissioner.*

[Indorsed on envelope:] To O. C. Fuller, clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Ga. Recd. of B. H. Hill, commissioner. M. P. Dixon, P. M., Atlanta, Ga. Received by due course of mails, this 14 day of Sep., 1897. Amos Fox, P. M. Received from the hands of the postmaster at Atlanta, Ga., and filed this 14 day of Sept., 1897. O. C. Fuller, clerk.

Interrogatories to Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company, et al. } In equity, No. 526.

Interrogatories in the above entitled cause, on behalf the complainant therein, to be exhibited to Jesse M. Smith, Washington, D. C.

Interrogatory No. 1. What is your name, residence, and occupation?

Interrogatory No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position, and what, if any, was your previous position with the Commission, and how long you occupied that.

Interrogatory No. 3. In what business were you engaged before
128 entering into the service of the Commission? How long were you so engaged, and in what part of the country?

Interrogatory No. 4. Are schedules of rates, fares, and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the Commission, and is it not one of your duties as auditor to examine such tariffs?

Interrogatory No. 5. From your examination of such schedules of rates, fares, and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

Interrogatory No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, state whether or not it is the rule in that territory in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory.

Interrogatory No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law, and prior thereto?

Interrogatory No. 8. Does this practice exist to any considerable extent in Eastern or trunk-line territory?

Interrogatory No. 9. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, except in cases of competition in transportation to the longer distant point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

129 Interrogatory No. 10. Under what classification are the rates from New York and other Eastern cities to Atlanta, Newnan, Grantville, Hogansville, Lagrange, West Point, and Opelika made? What is the minimum carload weight prescribed in that classification?

Interrogatory No. 11. Give a tabular statement showing the class rates that were in force in 1892, and that are now in force from New York and Boston to Newnan, Grantville, Hogansville, Lagrange, and West Point, and to Opelika and Atlanta, and showing the excess of the rates to Newnan, Grantsville, Hogansville, Lagrange, and West Point, on each class, over the rates to Opelika and Atlanta.

Interrogatory No. 12. Give a tabular statement showing the excess of the class rates to Newnan, Grantville, Hogansville, Lagrange, and West Point over the class rates to Opelika and Atlanta per minimum carload.

Interrogatory No. 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Stipulation as to depositions of Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, et al. } In equity, No. 526.

130 In the above entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C.,

may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for the Defendants.

Filed in clerk's office 27 day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Answers of Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, et al. } In equity, No. 526.

Depositions of Jesse M. Smith, a witness for the complainant in the above entitled cause.

The said witness, Jesse M. Smith, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1. My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

Answer to interrogatory No. 2. I have occupied that position since July 1, 1895; from January 1, 1888, to July 1, 1895, I was assistant auditor of the Commission.

Answer to interrogatory No. 3. I was engaged in railroad work
131 for about fourteen years prior to entering the service of the Commission, most of the time in the general freight department of the Louisville & Nashville Railroad, at Louisville, Ky., and Montgomery, Ala.

Answer to interrogatory No. 4: Common carriers are required to file with the Commission all schedules of rates, fares and charges applying on interstate traffic. All of such schedules are placed on file in the office of the auditor of the Commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable all schedules of rates, fares, and charges filed in compliance with section six of the act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the Commission.

Answer to interrogatory No. 5: From the large number of tariffs examined since the beginning of my service with the Commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers.

Answer to interrogatory No. 6: I am of the opinion that the practice referred to prevails as a rule in cases of transportation from points outside that territory through shorter distance local points to longer competitive points in that territory, though there are no doubt some exceptions.

Answer to interrogatory No. 7: To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning of my railroad service. It was in existence in the year 1887 and, as above indicated, prior thereto.

Answer to interrogatory No. 8: This practice does not prevail to any considerable extent in the territory east of the Mississippi River and north of the Ohio and Potomac rivers.

Answer to interrogatory No. 9: I have no personal knowledge
132 of any case where the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer distance point. I believe the lower charge to the longer distance point has, in practically all cases, been made on the ground of competition in transportation to such longer distance point, either direct competition in transportation from and to the same points, or competition with carriers operating from other markets to same point of destination.

Answer to interrogatory No. 10: The rates from New York and other eastern cities to Atlanta, Newnan, Grantville, Hogansville, La Grange, West Point, Ga., and Opelika, Ala., are subject to the Southern freight classification. This classification provides that unless otherwise specified in the classification the minimum carload weight of all articles loaded in cars 36 feet in length or less, shall be 24,000 pounds, or twelve tons when the rate applies per net or gross ton. For cars over 36 feet in length the minimum carload weights are provided in proportion to length of the car. Special minimum carload weights are provided in the classification for quite a large number of articles, the lowest being 10,000 pounds.

Answer to interrogatory No. 11: The class rates from New York and Boston to Newnan, Grantville, Hogansville, La Grange and West Point, Ga., also to Opelika, Ala., and Atlanta, Ga., which were in force in 1892 and at the present time, are shown in the following table:
133 (Ans. to Int. No. 11.)

Class rates from New York, N. Y., and Boston, Mass., to points named below.

[In cents per hundred pounds.]

	Classes.												Per bbl.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Newnan, Ga.:													
1892	131	111	98	83	69	56	....	....	....	....	....	78	....
1897	131	111	98	83	69	56	46	55	43	40	67	78	82
Grantville, Ga.:													
1892	147	128	114	97	80	64	....	....	....	....	....	94	....
1897	147	126	112	94	79	63	50	62	48½	45	77	89	93½
Hogansville, Ga.:													
1892	151	131	116	100	81	65	....	....	....	....	....	97	....
1897	150	131	116	98	81	64	51	63	49	46	79	33	96
La Grange, Ga.:													
1892	154	135	118	102	82	66	....	....	....	....	....	99	....
1897	154	135	118	102	82	66	53	65	47	45	80	97	91
West Point, Ga.:													
1892	142	124	110	93	77	62	....	....	....	....	....	88	....
1897	142	124	110	93	77	62	49	63	51	49	76	88	100
Opelika, Ala.:													
1892	114	98	86	73	60	49	36	48	40	39	58	68	78
1897	114	98	86	73	60	49	36	48	40	39	58	68	78
Atlanta, Ga.:													
1892	114	98	86	73	60	49	36	48	40	39	58	68	78
1897	114	98	86	73	60	49	36	48	40	39	53	68	78

(Ans. to Int. No. 11.)

The rates to Newnan, Grantville, Hogansville, La Grange, and West Point, Ga., are higher than the rates to Atlanta, Ga., and Opelika, Ala., as shown in the following table, the rates to Atlanta, and to Opelika being the same, viz:

134 [In cents per hundred pounds.]

	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Newnan, Ga	17	13	12	10	9	7	10	7	3	1	9	10	4
Grantville	33	28	26	21	19	14	14	14	8½	6	19	21	15½
Hogansville	36	33	30	25	21	15	15	15	9	7	21	25	18
La Grange	40	36	32	29	22	17	17	17	7	6	22	29	13
West Point	28	26	24	20	17	13	13	15	11	10	18	20	22

The excess of the rates on the first six classes to Newnan, Grantville, Hogansville, La Grange, and West Point over the rates on same classes to Atlanta, Ga., and Opelika, Ala., in dollars and cents per carload of 24,000 pounds, is shown in the following table:

	Classes.					
	1.	2.	3.	4.	5.	6.
Newnan	$40.80	$31.20	$28.80	$24.00	$21.60	$16.80
Grantville	79.20	67.20	62.40	50.40	45.60	33.60
Hogansville	86.40	79.20	72.00	60.00	50.40	36.00
La Grange	96.00	86.40	76.80	69.60	52.80	40.80
West Point	67.20	62.40	57.60	48.00	40.80	31.20

Answer to interrogatory No. 13. I know of nothing further that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that is material to the subject of this examination.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, Jesse M. Smith, and after having duly sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the fore-
135 going pages contain a full, true, and correct report of the testimony given by said witness. This the 26th day of August, 1897.

EUGENE L. GADDESS,
Commissioner.

[Endorsed on envelope:] To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga. Registered August 26, 1897, Washington, D. C., Station C, No. 2088. Atlanta, Ga. Received by due course of mails this 28' day of Aug., 1897. Amos Fox, P. M. Received this package from the hands of Amos Fox, P. M., at Atlanta, Ga., and filed Aug. 28, 1897. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Interrogatories to Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company et al. } In equity, No. 526.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Allen Fort:

Interrogatory No. 1. What is your name and residence and what position, if any, do you hold under the State of Georgia?

Interrogatory No. 2. How long have you held such position? Have your duties as a member of the railroad commission of Georgia required you to study and made you familiar with the railroad situation in that State? Had your attention been called to the transportation question prior to your becoming a member of the Georgia Railroad Commission; and if so, how and for how long a time?

136 Interrogatory No. 3. Were the rates in force in 1892, and now in force from Atlanta, Ga., to the following stations on the Atlanta & West Point Railroad between Atlanta and Opelika, Ala., to wit: Newnan, Grantville, Hogansville, La Grange, and West Point, established by the railroad commission of Georgia? Were the rates from Opelika, Ala., in force to those stations established by the railroad commission of Georgia?

Interrogatory No. 4. Name the rates in force in 1892 and now in force from Atlanta, Georgia, to those stations. Name the rates in force in 1892 and now in force from Opelika, Ala., to those stations.

Interrogatory No. 5. In establishing the rates named in the preceding interrogatory did the railroad commission of Georgia take into consideration the fact that the expense to the carrier of the service of carriage on local hauls in less than carload lots is greater per ton per mile than on long through hauls?

Interrogatory No. 6. Has the railroad commission of Georgia any authority or does it attempt to exercise any authority in establishing the through rates on interstate commerce or any proportions of such rates?

Interrogatory No. 7. Is it your opinion that the prosperity of a road is promoted more by a system of rates which builds up business at local stations along its entire line, or by a system which discriminates against such local stations and tends to build up business at widely separated trade centers alone?

Interrogatory No. 8. Have the effects of the former or latter system of rate making, referred to in the preceding interrogatory, come under your observation on any roads in the State of Georgia or elsewhere? And if so, state fully what those effects were.

Interrogatory No. 9. The geographical positions of Newnan, Grantville, Hogansville, La Grange, and West Point, and the character of the territory by which they are surrounded, such that they are capable
137 of no further growth? What effect, if any, would the reduction of the rates from New York and other Eastern cities to those

points so as to make their rates not higher than the rates to Opelika and Atlanta have on the prosperity and growth of those points?

Inter'ogatory No. 10. With a reduction in the rates on all classes of goods from New York and other Eastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point, so as to make their rates not higher than the rates for the haul through those points to Opelika, in your opinion, increase or diminish the tonnage or traffic which will be hauled by the roads to Newnan, Grantville, Hogansville, La Grange, and West Point?

Interrogatory No. 11. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and in inducing the investment of capital there and in promoting the prosperity of such locality in other respects?

Interrogatory No. 12. What effect, if any, do relatively high rates to a locality, or rates which discriminate against a locality, have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 13. State whether or not Atlanta and Opelika merchants compete for business or sell goods in the territory adjacent to and surrounding Newnan, Grantville, La Grange, and West Point.

Interrogatory No. 14. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:
Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

138 *Stipulation as to deposition of Allen Fort.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY et al.
In equity, No. 526.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Allen Fort, of Atlanta, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that J. D. Massey, of Atlanta, Ga., may act as commissioner in taking said deposi-

tion. The issuance of commission to him and formal caption and certificate by him are waived.

ED. BAXTER,
Counsel for Defendants.
L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

Filing: Filed in clerk's office 27' day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Answers of Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY et al. } In equity, No. 526.

The witness, Allen Fort, having been first by me duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

139 To interrogatory No. 1 witness, answering, says: That his name is Allen Fort; his residence at Americus, Georgia; that he is one of the railroad commissioners of Georgia; that he has held said position for about six years.

To interrogatory No. 2, witness answering says: That he has been railroad commissioner of Georgia since October 15th, 1891; that his duties as such railroad commissioner require him to study and become familiar with the railroad situation in Georgia; that prior to his accession to the commission he had given considerable thought to the transportation question; that as a member of the Georgia legislature during the years 1877, 1878, 1879, and 1880, it became his duty to investigate the subject in order that he might intelligently vote on pending legislation organizing the railroad commission of Georgia, and otherwise affecting railroad transportation in Georgia.

To interrogatory No. 3, witness answering says: The authorized rates in force in 1892, and rates now in force from Atlanta to Newnan, Grantville, Hogansville, La Grange, and West Point, stations on the Atlanta & West Point Railroad, were established by this commission; that the rates from Opelika, Ala., were not.

To interrogatory No. 4, witness answering says: That the authorized rates in force in 1892, and rates now in force from Atlanta to those stations, may be found on pages 114, 115, and 132 of the twentieth report of the railroad commission, copy of which is made a part of this answer. As to rates from Opelika, that city not being in Georgia, this commission has no control over rates from that point.

To interrogatory No. 5, witness answering says: They did.

To interrogatory No. 6, witness answering says: They did not and do not.

To interrogatory No. 7, witness answering says: In my opinion the prosperity of the roads is greatly promoted by a system of rates which

build up business at local stations along their entire lines, and that their prosperity is greatly injured by a system which discriminates against local stations, and tends to build up business at widely separated "trade centers" alone. At the local stations, where the roads get the entire business by granting just rates, they would increase their tonnage from these stations, thereby securing an improved permanent business, not
140 competitive. Such a course would foster friendly relations between the people and the roads, and in a number of ways benefit the roads and promote their prosperity.

To interrogatory No. 8, witness answering says: I have observed the effects of rate-making systems which build up business at local stations, and have found that the roads so doing were uniformly more prosperous and their business more reliable; while on the other hand, roads pursuing the opposite policy of discriminating against their noncompetitive stations have not been prosperous. This kind of oppression has promoted the construction of competing lines, often where the legitimate business did not warrant it.

To interrogatory No. 9, witness answering says: The geographical positions of Newnan, Grantville, Hogansville, La Grange, and West Point, and the territory by which they are surrounded, are such that they are capable of further growth; and if rates from New York and other Eastern cities were not higher to those points than rates to Atlanta and Opelika from New York and other Eastern cities, in my opinion their prosperity and growth would be promoted.

To interrogatory No. 10, witness answering says: In my opinion a reduction in rates from New York and other Eastern cities to those stations, so as to make said rates not higher than rates charged for the haul through those points to Opelika, would increase the tonnage of traffic hauled by the roads to those points.

To interrogatory No. 11, witness answering says: Relatively low and preferential rates to a particular locality, if such rates are stable, would tend to increase the population of such locality and induce the investment of capital there, and would promote the prosperity of such locality. It would promote manufacturing, cause jobbing houses to be established, and increase the trade of such locality by extending its territory.

To interrogatory No. 12, witness answering says: Relatively high rates to a locality which discriminates against it would have the opposite effect from that stated in the foregoing answer. The margin of profit is so small now in commercial transactions that a discriminating rate against a locality makes manufacturing and jobbing unprofitable; and a locality so discriminated against can not hold the trade in its own legiti-
141 mate territory; but more favored localities secure the trade, and are built up at the expense of the less favored.

To interrogatory No. 13, witness answering says: I presume that Atlanta and Opelika merchants do compete for business and sell goods in the territory adjacent to and surrounding said stations; to what extent I am unable to say.

To interrogatory No. 14, witness answering says: Nothing else of benefit to the parties at issue in this case, or either of them, material to the subject-matter of this examination, occurs to me at this time.

ALLEN FORT, *Deponent.*

I, J. D. Massey, of Atlanta, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, to wit, Allen Fort, and after having first sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witness. I do certify further that the Twentieth Report of the Railroad Commission of Georgia herein inclosed is the same referred to by witness aforesaid, and by him made a part of his answer, as therein set out.

This 29th day of September, 1897.

J. D. MASSEY, *Commissioner.*

(Endorsed on envelope:) To the clerk of the circuit court of the United States for the fifth circuit for the northern district of Georgia, Atlanta, Ga. Received of J. D. Massey, com'r, this package this 30 day of September, 1897. O. C. Fuller, clerk.

162 [Extracts from 20th Report Railroad Commission of Georgia.]

Standard freight tariff—Classes.

Distance.	Per 100 pounds.											Per bbl..	Per 100 lbs..	Per 100 lbs..
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	30	27	25	22	18	13	13	13	8½	8	18	17½	7	22
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	45	40	35	30	23	18	18	18	11½	11	23	23	8½	30
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	60	50	45	35	28	23	23	23	14	13	28	28	9	35
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

143 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes—Continued.

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**33**	**9½**	**60**
210	71	62	51	41	33	28	28	28	17	16	33	34	9½	61
220	72	64	52	42	33	28	28	28	17	16	33	34	10	62
230	73	66	53	43	34	29	29	29	18	17	34	36	10½	63
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	64
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**65**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	66
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	66
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	67
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	67
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**68**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	68
320	82	74	59	49	39	34	34	34	21	20	39	42	11	69
330	83	74	59	49	39	34	34	34	22	20	39	44	11	69
340	84	74	59	49	39	34	34	34	22	20	39	44	11	69
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**70**
360	85	75	60	50	40	35	35	35	23	21	40	46	11½	70
370	85	75	60	50	40	35	35	35	23	21	40	46	11½	70
380	88	76	61	51	41	36	36	36	25	23	41	50	11½	72
390	88	76	61	51	41	36	36	36	25	23	41	50	11½	72
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**72**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	74
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	74
430	91	77	62	52	42	37	37	37	26	24	43	52	11½	74
440	94	78	63	53	43	38	38	38	27	25	43	54	11½	76
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11½**	**76**
460	94	78	63	53	43	38	38	38	27	25	43	54	12	76

144 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.00	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6½	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7½	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**9**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	23.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	22
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	23
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	23
320	47	17	3.05	3.20	38.00	26.00	24.00	24
330	48	17	3.15	3.30	38.50	27.00	25.00	24
340	49	17	3.15	3.40	39.00	27.00	25.00	24
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	26
390	54	18	3.41	3.60	42.00	29.00	27.00	26
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**26**

145 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes—Continued.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
410	**56**	**19**	**3.54**	**3.70**	44.00	31.00	29.00	**28**
420	57	19	3.54	3.70	44.00	31.00	29.00	**28**
430	58	19	3.54	3.70	44.00	31.00	29.00	**28**
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

[Extracts from 20th Report Railroad Commission of Georgia—Continued.]

ATLANTA & WEST POINT R. R.

Passenger, Class A (three cents per mile).
Freight: To classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L, M, X, O, and R add ten (10) per cent to commissioners' standard tariff.
To Classes C, D, F, J, and P apply the commissioners' standard tariff.
Rosin, Class K, less twenty (20) per cent.

Distance table.

ATLANTA	0
East Point	6
Red Oak	12
Fairburn	18
Palmetto	25
Powells	33
NEWNAN	39
Pucketts	45
Grantville	51
Hogansville	58
Whitfield	65
La Grange	71
Gabbettville	80
WEST POINT	87

146 AUGUSTA, GIBSON & SANDERSVILLE R. R.

Passenger, Class A (three cents per mile).
Freight: Lumber, Class P. Cotton, Class J.
Add twenty-five (25) per cent to all other classes, except C, D, and F.

Distance table.

Augusta	0
Gary	5
Adventure	7
Gracewood	9
Richmond	11
Hephzibah	15
Bath	19
Blythe	22
Keysville	26
Noah	30
Mathews	32
Wrenns	36
Stapleton	41
Avera	45
Gibson	51
Melle Springs	55
Mitchell	59
Hines	61
Chalker	64
Warthen	70
Young	77
SANDERSVILLE	80

147 In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *versus* THE CLYDE STEAMSHIP COMPANY AND THE Atlanta & West Point Railroad et al. } In equity, No. 526. At Atlanta.

Frank Lyon, stenographer, 1317 F st., NW., Washington, D. C.

Received by express Aug. 9, 1897, and filed. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY AND THE Atlanta & West Point Railroad Company et al. } In equity, at Atlanta, Ga., No. 526.

In this case it is stipulated and agreed by counsel for complainant and counsel for defendants, that Frank Lyon, stenographer, shall act as special examiner, with all the powers of such, to take the depositions of such witnesses in this case as may be produced before him by the defendants.

It is further stipulated and agreed that he shall take the testimony of such witnesses in shorthand and afterwards reduce the same to typewriting, and certify that his report of the testimony is full, true, and correct. The signatures of the witnesses to their testimony, and all formal caption and certificate are expressly waived.

June 22nd, 1897.

L. A. SHAVER,
Counsel for Complainant.

ED. BAXTER,
Counsel for Defendants.

	Di.	C.	Re-d.	Re-c.	Re-re-d.	Re-re-c.
Biles, G. P	178	186	199	200	201	.....
Brown, J. M	100	106	.....	.....	.....	.....
Culp, J. M	1	8	24	.....	.....	.....
Compton, C. B	66	82	99	.....	.....	.....
Hunter, T. J	160	167	176	.....	.....	.....
Knox, G. R	136	146	138	.....	.....	.....
Lutz, R. E	114	125	.....	.....	.....	.....
Van den Burg, Y	26	38	57	61	64	64

EXHIBITS.

Exhibit No. 1. Offered by J. M. Culp, page 25. Articles of association of the Southeastern Freight Association.

Exhibit No. 2. Offered by Y. van den Burg, p. 60. State of freight transported by Clyde Line into Charleston from May 20th to June 20th, 1897.

Exhibit No. 3. Offered by R. E. Lutz, p. 115. Pages 64, 65, 66, and 67, 99, and 126, 127; 128, 129, and 130 of the report of the railroad commission of Georgia from October 15th, 1894, to October 15th, 1895.

Case No. 37.

FORT MONROE, VA., *June 24, 1897.*

J. M. CULP, a witness on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. J. M. Culp; 48 years; Washington, D. C.; traffic manager, Southern Railway.

2. Q. How long have you been connected with the freight traffic of the United States?

A. Upwards of 26 years.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, &c., to Newnan, Grantville, Hogansville, Lagrange, and West Point more than to Opelika.

149 The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, West Point, and Opelika, were in November, 1892, as follows:

[Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	78	....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	84	....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	87	....
Lagrange, Ga	154	135	118	102	82	66	....	....	....	....	....	99	....
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	88	....
Opelika, Ala	114	98	86	73	60	49	36	48	40	39	58	68	78

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, Lagrange, and West Point so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express?

A. It would not in my opinion increase the traffic shipped over the roads at all. It would reduce the gross revenue of the roads, and consequently the net revenue. It might distribute the business between these different stations themselves and between these stations and Opelika differently, but there would be no increase of business. No more merchandise or any other class of business would be shipped from New York and other points by the reduction.

4. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight from New York, Philadelphia, etc., to Opelika, Ala.?

A. The following are some of the principal lines or routes which actually and actively competed in 1892, and now compete from New York, Philadelphia, etc., to Opelika, Ala., for freight traffic of the classes named:

The Pennsylvania Railroad, the Baltimore & Ohio Railroad, the Philadelphia & Reading Railroad, and other lines, via all rail
150 routes through Hagerstown, Shennandoah Junction, Strasburg Junction, Alexandria, Richmond, and Portsmouth, Virginia, in connection with lines operating south of those junctions, the Southern Railway, the Norfolk & Western Railroad, the Seaboard Air Line, the Atlantic Coast Line, the Cape Fear & Yadkin Valley Railroad.

In addition to these all-rail routes there are thoroughly equipped and well-managed steamship routes operating through the South Atlantic ports. The Merchants & Miners Transportation Company from Boston via the Chesapeake ports from Baltimore via Savannah.

The Ocean Steamship Company from Boston, New York, and Philadelphia via Savannah.

The New York & Texas Steamship Company (Mallory Line) from New York via Brunswick, Georgia.

The Clyde Steamship Line from New York and Boston via Charleston, South Carolina, and from Philadelphia via Chesapeake ports.

The Old Dominion Steamship Company from New York via the Chesapeake ports.

The Baltimore Steam Packet Company (Bay Line) and the Baltimore, Chesapeake & Richmond Steamboat Company (York River Line) from Baltimore, Maryland, via the Chesapeake ports.

These various steamship lines have their rail connections at the several Chesapeake ports or the South Atlantic ports leading to Opelika. I have not enumerated all the links from these ports—all the links in the line.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from cities other than New York, Philadelphia, and Eastern points.

A. It is a difficult matter for me to name all of the transportation lines that compete from all points to Opelika, but I will endeavor to enumerate the principal ones.

First, from the western section of the country, lines operating from the various Ohio and Mississippi crossings, such as:

The Cincinnati, New Orleans and Texas Pacific Railway.
The Baltimore & Ohio Southwestern Railway.
The Louisville & Nashville Railroad.
The Southern Railway in Kentucky.
The Illinois Central Railroad (Louisville division).
The Ohio Valley Railroad.
The Nashville, Chattanooga, St. Louis Railway.
The Illinois Central Railroad (main line).
151 The Mobile & Ohio Railroad.
The Memphis & Charleston Railroad.
Kansas City, Memphis & Birmingham Railroad.
The Alabama & Vicksburg Railroad.
The New Orleans & Northeastern Railroad.

The Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, and the Illinois Central Railroad have routes from two or more of the crossings referred to.

The lines named connect at the Ohio and Mississippi river crossings referred to, with lines operating beyond the Ohio and Mississippi rivers, and reaching the entire Northern, Northwestern, and Western sections of the United States.

Second, from the northeastern section of the country, including Eastern seaboard cities, in addition to some of the lines enumerated in the first paragraph.

The Pennsylvania Railroad.

The Baltimore & Ohio Railroad.

The Philadelphia & Reading Railroad, and other lines operating via all-rail routes through Hagerstown, Shenandoah Junction, Strasburg Junction, Alexandria, Richmond, and Portsmouth, Va., in connection with lines operating south of those junctions, namely:

The Southern Railway.

The Norfolk & Western Railway.

The Seaboard Air Line.

The Atlantic Coast Line, and

The Cape Fear and Yadkin Valley Railroad.

In addition to these there is competition with thoroughly and well managed steamship routes operating through south Atlantic ports, such as—

The Merchants and Miners' Transportation Company, operating from Boston via the Chesapeake ports, and from Baltimore via Savannah, Ga.

The Ocean Steamship Company, operating from Boston, New York, and Philadelphia via Savannah, Ga.

The New York & Texas Steamship Company (Mallory Line), operating from New York via Brunswick, Ga.

The Clyde Steamship Company, operating from New York and Boston via Charleston, S. C., and from Philadelphia via the Chesapeake ports.

The Old Dominion Steamship Company, operating from New York City via the Chesapeake ports; and

The Baltimore Steam Packet Company (Bay line), and the Bal-
152 timore, Chesapeake & Richmond Steamboat Company (York River line), operating from Baltimore, Md., via the Chesapeake ports.

These various steamship lines, by rail connections at the several Chesapeake ports or the South Atlantic ports, have for years competed and still actively compete for traffic from the entire Eastern seaboard to Opelika.

I have not enumerated the links or continuations of these lines.

7. Q. State whether the rates on the above-mentioned classes of freights from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta, to Opelika, are controlled to any, and if so to what, extent by competition.

A. They may be said to be controlled entirely by competition.

8. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta, to Newnan, Grantville, Hogansville, La Grange, and West Point are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. They are not unreasonably high, and therefore are just and reason-

able to the shipper or consignee. The rates are lower than by any other known mode of conveyance. Business is done and has been done under these rates profitably to the shippers. The rates to these points are subject to competition as far as Atlanta and from those points that traffic is charged at no higher than the rates fixed by the Georgia railroad commission. The rates are relatively adjusted with respect to rates to points similarly in other parts of the same section of the country.

9. Q. Can the number of tons carried one mile or the number of tons carried of freight earning revenue or the average receipts per ton per mile or the average cost of carrying one ton one mile either jointly or separately be used as the standard for railroad rate making?

A. It can not and is not.

10. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. It does. Not only does it affect the rate itself, but it likewise affects the circumstances and conditions under which the property may be carried. Competition will require a road to run trains at a higher rate of speed; it will require it frequently to carry cars loaded to a less weight per car; it will require it to take sometimes a part of a carload without waiting to fill up the car; it will require frequently the road to pay
153 a claim the payment of which the railroad company might successfully resist in order to get business, and therefore it does very materially affect the circumstances and conditions under which the property is transport*ated*, in addition to the rate of freight which it affects.

11. Q. State whether there is any such competition at Newnan, Grantville, Hogansville, La Grange, or West Point as there is at Opelika?

A. There is not. There is only the one line terminating at those points, and, so far as the part of the rates from Atlanta for those points is concerned, there is actually no competition.

Cross-examination by Mr. SHAVER:

1. Q. Is the Chattahoochee River navigable to West Point?

A. The boats run to Columbus, Ga., according to my information.

2. Q. Are you positive that no boats run to West Point at any season of the year?

A. My attention has never been called to any.

3. Q. You stated that certain named reductions in the rates over the line involved in this case from New York to Newnan, Hogansville, Grantville, La Grange, and West Point would not increase the tonnage of traffic to those points at all, did you not?

A. I stated that a reduction of the rates to these points would not increase the traffic shipped over the roads. It might increase the tonnage to one point and reduce it to another, but in the aggregate it would not increase it at all. You include Newnan in your question. I did not understand the question in the direct examination to include Newnan. There are two roads at Newnan and two roads at La Grange, but the competition between these roads has not been so fierce and of so controlling force as to reduce the rates to those points as low rates to Opelika.

4. Q. You also stated that such reduction might disturb the business

now enjoyed by Opelika between those intermediate points, West Point, La Grange, etc., I believe?

A. I do not recall having said that. However, it might take some of the traffic shipped to Opelika to other points between Atlanta and Opelika.

5. Q. Would not that be of benefit to West Point, La Grange, and those other intermediate points from a business point of view?

A. If it increased their traffic, it would no doubt be a benefit
154 to them. But it would reduce the revenue of the road. It would make a reduction to these points not necessitated or required by competition. It would take the conditions that exist without any willing action of the railroads at Opelika; it would take that, I say, and transfer it to other points where no such conditions of competition exist. There is competition at Opelika not only from the East, between the lines which I have named and their connections, but there is likewise an adjustment of rates from the West to Opelika lower than to the other points; and the rates from the East are controlled to a large extent by the adjustment of the rates from the West to Opelika. If the rates from the East to these local stations were reduced, then it would in turn force the rates from the West and other sections of the country to these local stations to be reduced. It would arbitrarily create a competition unnecessarily at these local stations.

6. Q. Would not the increase of business resulting from the lowering of rates at West Point, La Grange, and these other intermediate points tend to bring about an increase of population and to induce capital to invest at these points?

A. I do not think that a reduction of the rates from the East to these stations to the basis of the Opelika rates would materially increase the population.

7. Q. Is not the tendency of giving a locality low rates to induce investment of capital and to bring population to said points?

A. Rates can be adjusted and are adjusted by competition to points which have the effect of increasing the business there, increasing the location of people, but taking the whole line of roads between Atlanta to West Point, or clear up to Opelika, and flatten them out to not higher than the Opelika rate would not induce any immigration there; would not result, in my opinion, in increasing the business at all. As I said before, it would no doubt make some change in the distribution of the business. It would not increase the total business done. It would not increase the total influx of immigration in there.

8. Q. Your opinion, then, is that a reduction of rates at a locality resulting from competition would tend to induce the investment of capital at such locality and to increase the population of such locality, but not a reduction of rates from any other cause?

A. I said this: I said that competition at a given point might be so fierce as to force rates to a very low basis, and thereby attract more population or more capital there than if the rates were materially higher.

But I say no such condition exists with respect to rates at Ope-
155 lika or with respect to rates to these intermediate points. I am emphatically of the opinion that the reduction of rates on boots and shoes and dry goods and merchandise generally shipped from the

East to these intermediate points would not to any appreciable extent cause anybody to settle at any one of these points that would not settle there anyway; and that it would not result in any more dry goods and boots and shoes and merchandise being sold at all these stations, not including Opelika, than are sold there now. So far as manufacturing establishments are concerned, the rates on their output going out now are not materially greater than from the competitive points.

9. Q. The reductions named to West Point, Lagrange, etc., would make the rates to those points not higher than the rates to Opelika, would they not?

A. Yes, sir.

10. Q. The rate on first class goods to Lagrange from New York is $1.54 per 100 lbs., while the rate for the longer haul through Lagrange to Opelika is $1.14, making a difference in favor of Opelika of 40 cents per 100 lbs. Would not a reduction of 40 cents per 100 lbs. be, in your opinion, a material reduction?

A. Quite material.

11. Q. The rates from New York to West Point on first class goods is $1.42, while for the haul through West Point to Opelika it is $1.14, making a difference of 28 cents in favor of Opelika. Would not a reduction of 28 cents be, in your opinion, material?

A. A very material reduction. A reduction of 20 per cent. But the difference between these rates is not greater, in my opinion, than is proper. We have strong competition at Atlanta and strong competition at Opelika forcing these rates to the figures at which they are. There is not this competition at these intermediate points. The circumstances are different and it affects necessarily the rates to Atlanta and the rates to these points, and I know of no better way of arriving at the value of the service, at the proper difference, than to take the rates which have been fixed by law and accepted by the railroads as the proper measure of the value of the service from Atlanta to these points.

12. Q. What roads actually reach Opelika?

A. The roads actually reaching Opelika are the Central of Georgia Railroad and the Western Railway of Alabama.

13. Q. Are not all the lines which are named in your direct
156 examination as leading to Opelika formed by the combination with those two roads which actually reach Opelika either as terminal or initial members of those lines?

A. Yes, sir.

14. Q. You stated that there were two roads which reached Newnan. Name those roads.

A. The Central of Georgia Railway and the Atlanta & West Point.

15. Q. Can not a large number of lines be formed by combining those two roads either as initial or terminal carriers with other roads to the East?

A. Yes, sir; and that has been so for a long time. But the competition between those roads reaching Newnan and their connections has not been such as to reduce the rates to Newnan to the same basis as to Opelika. The competition at Opelika which reduced these rates to the present basis existed years ago, long before 1887. The adjustment of rates to Opelika was one of fierce competition. At least one of the roads and

its connections insisted upon the adjustment as it is at present. The matter was even considered by the Alabama railroad commission, of which Capt. W. L. Bragg, at one time a member of the Interstate Commerce Commission, was then chairman; and the competition, the discussion, the negotiation, the opinion of the commission of Alabama, all tended to reduce the rates to Opelika to the present basis. No such competition as that has ever existed at Newnan. At least, it has not had the effect of reducing the rate. No line has gone in and made that adjustment; no line has determined to make that adjustment, as was the case at Opelika.

16. Q. How far is Newnan from Atlanta?

A. Thirty-nine miles.

17. Q. You also stated that there was two roads which actually reached Lagrange. Name those roads.

A. The Macon & Birmingham and the Atlanta & West Point.

18. Q. Do not those roads as initial or terminal carrier form lines with a number of other roads and lines to and from the East?

A. All that I have said with respect to Newnan may be said with respect to Lagrange.

19. Q. If you go far enough around from the direct route, the number of lines which may be formed by combination is almost unlimited, is it not?

A. Very numerous.

20. Q. You stated in your direct examination that the rates to
157 West Point, Lagrange, and these other intermediate points from New York were just and reasonable in and of themselves. The rates to West Point and Lagrange, being respectively, 1.42 and 1.54 on first class goods, is the materially lower rate of $1.14 for the longer haul though those points to Opelika also just and reasonable in and of itself?

A. It could be higher and not unjustly high. But as it exists it pays more than the cost of carrying the business to Opelika, considered alone.

21. Q. You spoke of rates to West Point, La Grange, and so forth, as being reasonable in and of themselves, because, among other reasons, they were based in part on rates not higher than those prescribed by the Georgia railroad commission?

A. I said the difference between the rate to Atlanta and the rates to these stations did not exceed the rates of the Georgia commission, and I said I knew of no better maxim measure of the value of the service or of the differential than that.

22. Q. Does the Georgia railroad commission have or attempt to exercise any authority in respect to the through rates on interstate commerce, or proportions of such through rates?

A. I do not understand that the Georgia commission has any control over interstate rates, but they do attempt to regulate interstate rates through the Interstate Commerce Commission, or at least have done so. They have done so in this particular case.

23. Q. You mean they instituted these suits before the Interstate Commerce Commission?

A. Yes, sir.

24. Q. You stated in substance in your direct examination tha the average receipts per ton per mile and estimated cost of carrying one ton

one mile on traffic in general did not furnish a standard by which you could determine what was a reasonable rate in a given case, I believe?

A. Yes, sir.

25. Q. Is not such data useful to some extent in determining whether an existing rate is or is not excessive?

A. It is useful in determining whether all the rates are excessive. In other words, the average receipts of a road per ton per mile might be so much that, taken in connection with other things, it might be held that the rates were excessive. But much the largest portion of the tonnage of all roads is carried at rates which are fixed by competition in some form or other, either of carriers or of markets or of one product with another product, which will serve the same purpose.

158 26. Q. How long have carriers been making out this data as to average receipts per ton per mile and estimated cost of carrying one ton one mile?

A. A great many of them do not do it at all. The Southern Railway to-day does not attempt to figure the cost per ton per mile of carrying freight. The records of the East Tennessee, Virginia & Georgia Railroad show that the estimated average cost for transporting all kinds of freight on all portions of the East Tennessee, Virginia & Georgia Railroad from April 1st, 1891, to June 24th, 1892, inclusive, was seventy-one one-hundredths (.71) of a cent per ton per mile.

27. Q. Has not this data been kept by other roads for a great many years?

A. I have no information that any road has invariably kept the cost per ton per mile for a great many years. Some roads have done it for some years, I know.

28. Q. They have done it for their own use, have they not?

A. I assume so. It is published in their annual reports. I will say that my opinion is that it is very difficult if not impracticable to arrive at the actual cost per ton per mile of moving freight traffic over any road.

29. Q. This data is based upon actual calculation, is it not?

A. The average receipts per ton per mile are very easily arrived at. The average cost per ton per mile, as I have testified, is estimated as to the East Tennessee, Virginia & Georgia Railroad.

30. Q. The average receipts per to' per mile are the result of accurate calculation, are they not?

A. Yes, sir.

31. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration in excess of the cost of transportation?

A. In my opinion a road is always justified in taking the additional traffic, or traffic which it otherwise could not get, to the extent of making a rate as low as the actual movement expense incurred in the movement of that traffic.

32. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. It is very difficult to obtain the actual cost of carriage. Railroads arrive at that result just as nearly as they can, and then they endeavor in making rates to fix that average cost or that estimated cost of carriage

as a minimum below which they will not go. Now there may be
159 average cost or estimated cost including fixed charges; there is the cost which leaves out the fixed charges and take all other kinds of expense; then there is a cost which pertains simply to the movement of a particular business, a cost which is incurred only because that particular business is moved.

33. Q. Is not the expense or the cost of the service of carriage an element to be considered in determining the reasonableness or the unreasonableness of a given rate or set of rates?

A. My experience is that the estimated cost is only used as a minimum below which the carriers will not go.

34. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Other things being equal, the longer the haul the greater the cost.

35. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Other things being equal; yes. A great deal, however, is covered by that term "other things being equal."

36. Q. Is not the consumption of fuel greater the greater the length of the haul, other things being equal?

A. Other things being equal; yes.

37. Q. Is not the wear and tear on locomotives, cars, tracks, road, etc., greater the greater the length of the haul, other things being equal?

A. Yes, sir.

38. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the haul, other things being equal?

A. Yes, sir.

39. Q. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short road?

A. Other things being equal; yes, sir.

40. Q. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Other things being equal; yes, sir.

41. Q. Other things being equal, is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper more extended markets for his goods or produce than a haul of 50 miles?

A. Not necessarily. The haul to the shipper or consignee where he is at a point 100 miles distant from the point of shipment may not be
160 worth as much as the haul to the consignees remote only 50 miles from the same point of shipment.

42. Q. Are not the rates from New York to West Point, La Grange, and the other intermediate points named, made up of the through rates through to Opelika or Atlanta plus the locals to those points either from Opelika or Atlanta?

A. That is not true as to Newnan, and it is barely possible that the rates to Granville may be made on the basis of the rate to Newnan, added to the Georgia commission rate, but I am not sure of that. If the rates

to Newnan added to the local rate of the Georgia commission from Newnan would make a lower rate than from Atlanta, then the Newnan combination would obtain.

43. Q. Is not traffic transported from New York and other northeastern cities to West Point, La Grange, and the other intermediate points named, under a through bill of lading naming an aggregate through issued by the initial carrier at New York?

A. Consignments are made through, and through rates are given.

44. Q. Is not the expense to the carrier on strictly local hauls in less than car loads greater per ton per mile than on through hauls?

A. The conditions being equal; yes.

45. Q. Was Opelika one of the localities treated as a competitive point by the Southern Railway & Steamship Association during the existence of that association?

A. During a part of the existence of it.

46. Q. Are not the same rates now in force to Opelika from New York and other northeastern cities as were maintained to that point during the existence of the Southern Railway & Steamship Association?

A. During the latter part of it.

47. Q. Those rates were maintained, were they not, at the time that the association went out of existence?

A. Those were the rates at the time it went out of existence.

48. Q. The rates maintained or established by the Southern Railway & Steamship Association were made by the consent of the carriers, members of that association, were they not?

A. They were the result of competition between these carriers who were members of the Southern Railway & Steamship Association and some of whom were not.

49. Q. Did not the members of the association consent to the rates established by the association so long as they remained members thereof?

161 A. They operated these rates, but they were forced by competition. The railroad companies would not have allowed the rates to be reduced to Opelika lower than to other places except for that competition.

50. Q. Competition caused the roads to form the association, did it not?

A. The association was formed as a means of preventing the roads destroying each other by competition.

51. Q. After that association was formed did it not by a committee establish rates for all the line members of the association?

A. The association did not do it. The lines by becoming members did not surrender all their rights as individual lines. It was simply the machinery for conference—for the expression of views—for the competitive forces, but without the destructiveness of competition, and no line ever joined the association without the power and reserving the right to go out of that association upon a reasonable notice or refuse to join the association at the end of the year. There never was a surrender of their right as there would be by the lease of a railroad to some other railroad or some other company.

52. Q. I understand that; but were they not at least called upon, so long as they were members of that association, to conform to the rates established by it?

A. They had all their rights to insist upon any rates they desired; if, however, they failed to agree or to come to an understanding about that rate the members of the association did have an agreement by which they agreed to submit to arbitration these questions, and whenever this disinterested body said that such and such an adjustment of rates was a proper one, they abided by it if they could. If the competition, however, required the rate to be made, it made it. For illustration, if the rate had been, we will say, $1.54 from New York to Opelika, and that had been considered the proper rate by the line competing for the business from Opelika to New York, and some line had wanted to reduce that rate itself, it would have decided to reduce that rate. If an agreement could not have been reached, or an understanding been reached, it would have gone through the various deliberative bodies to the final disinterested arbitration board, and if the board said $1.54 is the right rate, the proper rate in and of itself, still if the rate from the West over the lines which were not members of the association who controlled the bulk of trade to Opelika, who absorbed nearly all the rate, insisted upon a rate to Opelika
which was less than a rate relative to that $1.54, the lines mem-
162 bers of the association would have had to recognize the fact then, and reduce the rate from the East to Opelika.

53. Q. Whatever rates were promulgated by the association had been previously agreed to, had they not, by the lines subject to those rates?

A. Yes, sir; either by agreement or by arbitration.

54. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. More than 26 years.

55. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in case of competition in transportation to the longer distance points?

A. Not that I recall. No line willingly and of its own volition arbitrarily reduces the rates to a further point to a less figure than an intermediate point. It is the result of competition where it does make the rate less for the longer than for the shorter distance in the same direction over the same line.

Redirect examination by Mr. BAXTER:

1. Q. Something has been said in the cross-examination in regard to the value of the service. May there not be a difference between the value of the service to the shipper and the value of the service to the carrier?

A. Precisely. The value of the service to the shipper or consignee for the transportation of 100 lbs. of stuff may be only 25 cents per hundred pounds. The value of that service may be to the carrier greater from at least two reasons: One, that it will cost it more to perform the service than the 25 cents; another reason, that it may be employing all its motive power and rolling stock in the transportation of property which yields it for an equivalent service more net money than 25 cents would for the first service referred to.

2. Q. If the shipper living at Memphis, where cotton is worth in the market, say, 10 cents, ship that cotton to Holly Springs, where it is worth in the market only 9 cents a pound, would not the value of the service to him be less than nothing?

A. It would; one cent per pound less than nothing.

3. Q. If, on the other hand, he shipped it from Holly Springs, where it was worth 9 cents per pound, the value of the service to him would be one cent, would it not?

163 A. Yes, sir; one cent per pound; and in either case the value of the service to the railroad company might be the same.

4. Q. Please file as Exhibit No. 1 to your deposition a copy of the articles of association of the Southeastern Freight Association.

A. Yes, sir.

(The articles of agreement referred to are marked "Culp, Exhibit No. 1," hereto attached.)

5. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue of this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Y. VAN DEN BURG, a witness on behalf of defendant, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. Y. Van den Burg; forty-one years of age; traffic manager Louisville & Nashville Railroad Co.; Louisville, Ky.

2. Q. How long have you been connected with the freight traffic business of the United States, and in what capacities?

A. I have been connected with the traffic departments in the United States since 1880, and with the lines in the territory south of the Ohio and east of the Mississippi rivers since 1882, in various capacities, from freight clerk up.

3. Q. In this case the Interstate Commerce Commission ordered the defendents to desist from charging for the transportation of the like kinds of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, La Grange, and West Point, more than to Opelika. The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta, to Newnan, Grantville, Hogansville, La Grange, and West Po'nt were, in November, 1892, as follows:

164 [Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	78	.....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	94	.....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	97	.....
La Grange, Ga	154	135	118	102	82	66	....	....	....	....	....	99	.....
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	88	.....
Opelika, Ala	114	98	86	73	60	49	36	48	40	30	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, La Grange, and West Point so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. Newnan, Grantville, Hogansville, La Grange, and West Point simply supply local consumption or demands at the point proper and within limited territory adjacent. The reduction in rates indicated would not increase the consumption, and there would be no increase of traffic to compensate the carrier to any extent for the loss of revenue on account of the reduction.

In saying this I have in mind that competing roads to points on their lines opposite the Atlanta and West Point points mentioned and which points compete with the Atlanta & West Point Road in supplying the consumption in the territory situated between their lines and the Atlanta and West Point would, of necessity, revise their rates so as to keep them aligned, as at present, with those that might be made to Atlanta & West Point points. In other words, the relative difference as between any one of these Atlanta and West Point points and points opposite on competing lines would remain the same, and this fact would simply result in each point holding its established trade.

4. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of all classes of freight from New York, Philadelphia, etc., to Opelika, Ala.

165 A. The following lines actually and actively competed in 1892, and do now compete, for the transportation of all classes of freight from New York, Philadelphia, etc., to Opelika:

From Boston:

Direct steamers of the Ocean Steamship Company to Savannah.

The Merchants & Miners' Transportation Companies, direct steamers to Norfolk.

The various lines of steamers and rail lines from Boston to New York, connecting with the direct steamer lines from that port to Norfolk, Portsmouth, Charleston, Savannah, and Brunswick, in connection with the rail lines from Norfolk, Portsmouth, Charleston, Savannah, and Brunswick.

The rail lines and the various steamship lines from Boston to New York, in connection with the Pennsylvania Railroad, and the Jersey Central Railroad from New York via Alexandria, Norfolk, Harrisburg, Hagerstown, Shenandoah Junction, and rail lines thence.

From New York:

The Ocean Steamship Company to Savannah.

The Clyde Line to Charleston.

The Mallory Line to Brunswick.

The Old Dominion Steamship Co. to Norfolk and Portsmouth, in connection with the rail lines from Norfolk and Portsmouth, Charleston, Savannah, and Brunswick.

And the following all-rail routes:

The Pennsylvania Railroad via Alexandria, Harrisburg, and Hagerstown, the various rail lines thence.

The Pennsylvania Railroad via its Norfolk route, the various rail lines thence.

The Jersey Central in connection with the Reading road via Harrisburg.

The Jersey Central in connection with the Baltimore and Ohio via Shenandoah Junction, in connection with the rail routes from Harrisburg and Shenandoah Junction.

From Philadelphia:

The Ocean Steamship Co., to Savannah.

The Clyde Steamship Co., to Charleston, in connection with the rail routes from Savannah and Charleston.

The Pennsylvania Railroad via Alexandria, Harrisburg, and Hagerstown, and Norfolk, in connection with the rail routes from Alexandria, Harrisburg, Hagerstown, and Norfolk.

The Baltimore & Ohio via Shenandoah Junction, in connection with the rail lines from that junction.

166 From Baltimore:

The Bay Line of steamers to Norfolk and Portsmouth.

The Merchants and Mariners' Transportation to Savannah, in connection with the rail lines from Norfolk, Portsmouth, and Savannah.

The Pennsylvania Railroad via Alexandria, Harrisburg, Hagerstown, and Norfolk, and via Richmond, with the Richmond, Fredricksburg and Potomac Railroad, in connection with the rail lines from Alexandria, Hagerstown, Harrisburg, Norfolk, and Richmond.

In addition to the regular steamer lines already enumerated from Boston, New York, Philadelphia, and Baltimore, there are at all times numerous sailing vessels from Boston, New York, Philadelphia, and Baltimore to South Atlantic ports.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from cities other than New York and Philadelphia.

A. The following lines competed in 1892 and do now compete for the transportation of all classes of freight to Opelika from cities other than New York, Philadelphia, etc.:

From Cincinnati:

The Cincinnati, New Orleans and Texas Pacific Ry. via four different routes.

The Louisville & Nashville Railroad via three different routes.

The Baltimore & Ohio Southwestern Railway via four different routes.

From Louisville:

The Louisville & Nashville Railroad via three different routes.

The Southern Railway via three different routes.

The Illinois Central Railroad via four different routes.

From Evansville and Henderson:

The Louisville & Nashville Railroad via three different routes.

The Ohio Valley Railroad via four different routes.

From Paducah:

The Nashville, Chattanooga & St. Louis Railway via three different routes.

The Illinois Central Railroad via the four different routes.

167 From Cairo:

The Nashville, Chattanooga & St. Louis Railway, via two different routes,

The Illinois Central Railroad, via seven different routes,
The Mobile & Ohio Railroad, via seven different routes,
The Baltimore & Ohio Southwestern Railroad,
The Cincinnati & Muskegon Railroad,
The Cincinnati & Westwood Railroad,
The Cincinnati, Georgia & Portsmouth Railroad,
The Cincinnati, Hamilton & Dayton Railroad,
The Cincinnati, Jackson & Mackinaw Railroad,
The Cincinnati, Lansing & Northern Railroad,
The Cincinnati & Northwestern Railroad,
The Cincinnati, Portsmouth & Virginia Railroad,
The Cleveland, Cincinnati, Chicago & St. Louis Ry.,
The Erie Railroad, and
The Pennsylvania Railroad are terminal lines at Cincinnati, reaching that point from the North, East, or West.

The Chicago, Indianapolis & Louisville Railroad,
The Baltimore & Ohio Southwestern Railroad,
The Cleveland, Cincinnati, Chicago & St. Louis Ry.,
The Pennsylvania Railroad,
The Louisville, Evansville & St. Louis Railroad,
The Louisville, Henderson & St. Louis Railroad are terminal lines at Louisville, reaching that point from the North, East, or West.

The Louisville & Nashville Railroad,
The Evansville & Terre Haute Railroad,
The Louisville, Evansville & St. Louis Railroad, and
The Peoria, Decatur & Evansville Railroad are terminal lines at Evansville, with a bridge transfer at Henderson, reaching those points from the North or West.

The Illinois Central Railroad is a terminal line at Paducah from the North.

The Cleveland, Cincinnati, Chicago & St. Louis R. R.,
The Illinois Central Railroad,
The Mobile & Ohio Railroad,
The St. Louis, Iron Mountain & Southern R. R., and
168 The St. Louis Southwestern Railroad are terminal lines at Cairo, reaching that point from the North or West.

All these lines, with terminals at Cincinnati, Louisville, Evansville, Henderson, Paducah, and Cairo compete, in connection with lines leading south from these Ohio River crossings, for Opelika traffic originating on their lines, or through their connections in territory east and north of them and west of them as far as the Pacific coast.

6. Q. State whether the rates on the above-mentioned classes of freight from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Opelika, are controlled to any, and, if so, to what extent, by competition.

A. The rates from New York and Philadelphia to Opelika on the various classes of freight via Charleston, Augusta, and Atlanta were entirely controlled by competition. The existing rates were established by the Central of Georgia Railway and its various connections, and there is no alternative left to the route via Charleston, Augusta, and Atlanta but to compete at the same figures.

7. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, La Grange, and West Point are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates on various classes of freights from New York and Philadelphia via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, La Grange and West Point as just and reasonable of themselves.

The rates to Grantville, Hogansville, La Grange, and West Point are made on the lowest obtainable combination, Atlanta and Opelika governing, as the case may be. In other words, in the adjustment of the totals to these points they are given the benefit of whatever competition may have compelled the existing rates to Atlanta and Opelika to be with the rates fixed by the Georgia railroad commission, added, and which latter are lower than charged for similar services and distances in other sections of the country and lower than can be obtained by any other means of transportation.

So far as Newnan is concerned, the Central Road and its various connections fix the rates from New York, Philadelphia, etc., to that point less than the lowest combination; and while they are, in my
169 opinion, lower than they may reasonably be, the route via Charleston, Augusta, and Atlanta must either compete at those rates or retire from competing for the traffic.

8. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

As an illustration: Where percentages are established between coastwise steamers and inland carriers in dividing rates from Eastern cities to interior points, the lines from New York to Charleston, Savannah, and Brunswick are allowed earnings equivalent to 250 miles of rail service. The distance from Savannah to Opelika is 292 miles, making the distance from New York to Opelika, via Savannah, 542 miles. The distance from Charleston to Opelika is 417 miles, making the distance from New York to Opelika, via Charleston, Augusta, and Atlanta, 667 miles. In other words, this latter route, with its 667 miles, has to perform the service at the same rate the 542 route realizes.

9. Q. State whether there is any such competition at Newnan, Hogansville, La Grange, or West Point as effects rates like the competition that exists at Opelika.

A. The Atlanta and West Point Roads is the only line reaching Grantville and Hogansville. West Point is the junction of the Atlanta & West Point Railroad and the Western Railway of Alabama, which are under a common management and control, and the point is only reached. But, in fixing rates from Eastern cities to Grantville, Hogansville, and West Point, the competition that forces the existing rates to Atlanta and Opelika has been recognized, and so far as the carriage up to Atlanta or Opelika is concerned traffic for these points, Grantville, Hogansville and West Point,

is as competitive as if it were destined to Atlanta and Opelika proper. La Grange is a junction between the Macon & Birmingham and the Atlanta & West Point roads, and in fixing the rates from eastern cities to this point the competition that forces the existing rates to Atlanta has been recognized, or, in other words, so far as the carriage up to Atlanta is concerned, traffic from Eastern cities to La Grange is as competitive as if destined to Atlanta proper.

Newnan is the junction between the Atlanta and West Point, and the Central of Georgia Railway, and this competition affects the rate
170 to that point to the extent of having resulted in the adoption of totals less than any combination yet somewhat higher than Opelika.

10. Q. State whether the number of tons carried one mile or the number of tons car'ied of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, can, either jointly or separately, be used as the standard in rate making, and give your reasons for any opinion you may express.

A. The items can not be used as a standard in railroad rate making in fixing an adjustment of rates between any two or more points. Rates have to be made on all classes of freight so as to cover anything that might be offered for transportation, and not knowing the tonnage that will move under each class, or the aggregate tonnage that will be moved under all classes, or the percentage the aggregate tonnage stands to the total tonnage of the road, it is impossible to consider the rate per ton per mile, or the average receipts per ton per mile, in fixing rates between any two or more points; and, independent of this, competition compels the carrier frequently to fix rates without regard to any one or more of these specific items of your inquiry.

11. Q. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer. In other words, do you know anything else material to either side of this case?

A. No, sir.

Cross-examination by Mr. SHAVER:

1. Q. You named a number of lines that may be formed from New York and other Northeastern cities, to Opelika. Can not all those lines be formed also to West Point, La Grange, Hogansville, Grantville, and Newnan by combination with the Atlanta & West Point Railroad and the Western Railway of Alabama as the terminal carriers of the lines?

A. The various lines I have mentioned as competing for the traffic to Opelika may, in connection with the Western Railway of Alabama and the Atlanta & West Point Railroad, compete for traffic to the points that have been mentioned.

2. Q. Do they not compete for traffic to those intermediate points?

A. I understand they compete for traffic destined to Newnan, Grantville, Hogansville, La Grange, and West Point.

171 3. Q. Traffic is transported from New York and other Northeastern cities over those lines to Newnan, Grantville, Hogansville, La Grange, and West Point under through bills of lading and under through rates, is it not?

A. I understand through rates are published from New York and other Eastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point, and can be transported under through bills of lading.

4. Q. Is not traffic transported over those lines, under through bills of lading, naming through rates?

A. The Louisville & Nashville Railroad does not compete for traffic from New York and other Eastern cities to the points that have been mentioned, but where through rates are published it is reasonable to assume that through bills of lading are issued.

5. Q. You stated that the reduction in rates to Newnan, Grantville, Hogansville, La Grange, and West Point, so as to make these rates not higher than the rates to Opelika, would not increase the traffic to those points. Is not the natural tendency of a reduction in rates to a given point toward improving and increasing the business at that point?

A. As I stated, Newnan, Grantville, La Grange, and West Point simply supply a local consumption or demand at the points proper and within a limited territory adjacent. A reduction to these points would unquestionably result in the rates from Eastern cities to points on other lines that now supply territory tributary to Newnan, Grantville, Hogansville, La Grange, and West Point being reduced, and this would result in all these points simply holding the trade they now have. The reductions would not result in increasing the consumption at any of these points. In other words, it would not result in the consumption of any more flour, bacon, or dry goods, or boots and shoes, than there is now.

6. Q. You have stated all that in answer to the direct interrogatories. My question does not call for that. I will repeat it. Is not the natural tendency of a reduction in rates to a given point towards improving and increasing the business at that point—is not that the natural tendency?

A. I have given my reasons why the reductions in the rates can not, in the case referred to, increase the traffic to these points. To make from New York to West Point the same rate as from New York to Opelika would, on first-class, involve a reduction of twenty-eight cents per hundred pounds. Dry goods is classed as first-class. There are hundreds of yards in a hundred pounds of dry goods, and a mer-
172 chant selling these dry goods, let him be ever so willing, could not possibly distribute the twenty-eight cents per hundred pounds of reduction on these hundreds of yards of dry goods. Hence, no reduction in the price of dry goods would result, and the reduction in the freight rate would yield no benefit to the consumer.

7. Q. My question was a general question, not with reference to points involved in this case, but it is this:

Is not the natural tendency of a reduction in rates to a given point towards improving and increasing the business at that point? Would not that be the general rule in the absence of exceptional conditions?

A. I do not believe that I can answer that general question as applicable to the case in point. I have stated that, under existing conditions, a reduction in rates from Eastern cities to these various Atlanta and West Point points, making them the same as from New York to Opelika, would not result in increasing the traffic.

8. Q. Can you answer the question without reference to the localities involved in this case: Whether or not, as a general rule, in the absence

of exceptional conditions, the natural tendency of a reduction in rates to a given point is towards improving and increasing the business at that point? Can you or not answer that question?

A. In answer to the previous interrogatory I did not refer to exceptional conditions, and I can not answer the general question as you seem to construe it.

9. Q. Is not the natural tendency of a reduction in rates to a given point towards the encouragement of the investment of capital at that point and the increase of its population?

A. Not necessarily. Wherever a carrier reduces its rate to a certain point, and such reduction is to the detriment of any other point on a competing line, rates to that point are also reduced and the status quo is maintained. I do not believe that an adjustment of rates to our Southern territory, different from what exists at present, would materially change the distribution of the traffic. The conditions governing the distribution of the traffic have been largely forced by commercial conditions, and all railroads can undertake to do is to meet commercial conditions.

10. Q. I understand it to be your opinion, then, that the reduction of rates to these shorter distance points, Newnan, Grantville, Hogansville, La Grange, and West Point, so as to make them not higher than the rates to Opelika or Atlanta, would not affect the distribution of traffic as between those points and Opelika and Atlanta?

173 A. While it would not result in an increase of the traffic, it might result in Newnan, Grantville, Hogansville, La Grange, and West Point drawing their supplies to some greater extent from New York or some other point, as, for example, Atlanta, than they do at present.

11. Q. Is not the natural effect of unfavorable rates to or discrimination in rates against a given point to injure the mercantile and other business interests of such point, and to retard or prevent its growth and prosperity?

A. A railroad company could adopt a rate adjustment that would absolutely kill a town; but, with my knowledge of affairs, I do not know of any road pursuing such a policy towards any point.

12. Q. That policy would be suicidal, would it not?

A. Yes, sir; suicidal to the railroad.

13. Q. Is it not, then, more to the interest of roads that they should have such a system of rates that would build up the business at the local stations along their entire lines than a system which favors the building up of widely separated trade centers?

A. It is to the interest of every railroad, and so far as I know it is the policy of every Southern railroad, to build up its local business. But, as to the case in question, the business at Newnan, Grantville, Hogansville, La Grange, and West Point would not in my opinion be increased by any reduction in freight rates.

14. Q. Have not Atlanta and Opelika been benefited by the rates lower to those points than to surrounding shorter distance points?

A. It may have resulted in Atlanta and Opelika distributing to a territory somewhat larger than would be the case under a higher adjustment of rates.

15. Q. Is it not a well-known fact that Atlanta has been built up by railroads?

A. The concentration of transportation lines at Atlanta has unquestionably been of considerable benefit to it.

16. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir; but that is not the case when you come to compare the business of Atlanta with the business at Newnan, Grantville, Hogansville, La Grange, and West Point.

174 17. Q. Do not merchants at Atlanta trade at Newnan, Grantville, Hogansville, and La Grange, and in adjacent territory, in competition with local merchants at Newnan, Grantville, Hogansville, and La Grange?

A. I do not believe the jobbing houses of Atlanta undertake to supply local consumption at the points mentioned, but, as a rule, confine their business to merchants located at these points.

18. Q. Do not merchants at Opelika trade at West Point or La Grange and adjacent territory in competition with local merchants at West Point or La Grange?

A. I am not familiar with just what the Opelika merchants do in this respect.

19. Q. If the rates from New York and other Northeastern cities to Newnan, Grantville, Hogansville, and La Grange were so reduced as not to be higher than the Atlanta rates, would not the merchants at Newnan, Grantville, Hogansville, and La Grange buy all their goods direct from New York and other Northeastern cities, and not buy any of their supplies from Atlanta?

A. It depends upon what the relations are between the Atlanta merchants and the merchants at the points mentioned in the way of making advances, extending credits, etc., etc., but I should think a reduction in the rates from New York and Eastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point would tend to divert some business now controlled by Atlanta to New York and other Eastern cities.

20. Q. If the rates from New York and other Northeastern cities to West Point and La Grange were so reduced as not to be higher than the Opelika rates, would not the local merchants at La Grange and West Point procure their goods from New York and other sources of supply rather than from Opelika?

A. My answer is substantially the same as made to the previous interrogatory.

21. Q. Do not rates affect the price of goods, and therefore do not lower rates tend to bring about lower prices?

A. Yes, sir. But, as I have previously explained, the reductions ordered to West Point and the other stations would not result in lowering prices to the consumer, even if the merchants were willing to pursue that policy.

22. Q. The West Point rate from New York to Philadelphia on first class is $1.42, while for the longer distance, through West Point to Opelika, it is $1.14, making a difference of twenty-eight cents in favor of Opelika. Is not that a material difference in rates?

175 A. It is not very material when you come to distribute it over the hundreds of yards of calico which it takes to make a hundred

pounds of weight, or on a hundred pounds of boots and shoes, or a hundred pounds of hats and caps.

23. Q. Do not lower prices bring goods within the reach of a greater number of people and thus increase consumption?

A. It has that tendency.

24. Q. What are your duties as traffic manager of the Louisville & Nashville Railroad?

A. The making of rates is under my jurisdiction.

25. Q. Are not rates necessarily expressed in figures and are not they the sum of other figures?

A. I do not know that I understand you; if you mean that the rates between any two points are necessarily the combination of two or more other rates, I must answer no.

26. Q. I do not mean that. I mean in fixing a rate do you not, for instance, first fix the cost at so many cents in figures, and then the other items in figures, that go to make up the total rate?

A. No, sir.

27. Q. In your opinion, is not the test of the reasonableness of a rate, whether traffic will move under it and not be diverted from the road or line charging the rates to another road or line?

A. Not necessarily.

28. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads or lines a reasonable rate?

A. My opinion is it is not unreasonable.

29. Q. As one ground of your opinion that the rates to the intermediate points involved in this case, Newman, Grantville, Hogansville, La Grange, and West Point were reasonable, you stated that they were lower than by other modes of conveyance?

A. Yes, sir.

30. Q. What other modes of conveyance did you refer to?

A. I testified that the rates are lower than can be secured by any other practicable means of transportation. For instance, if Newman, Grantville, Hogansville, La Grange, and West Point were not reached by rail, and would have to draw their supplies by teams, the cost of transportation to the consumer would be very much greater than the present rates.

31. Q. I think you also mentioned as a reason why you thought those rates reasonable that they were not higher than the rates established for the same distance by the Georgia railroad commission?

176 A. I stated the rates were reasonable because they were based upon the existing rates to Atlanta or Opelika, which are forced by competition, with the Georgia railroad commissioners' rates added, and which latter were on a lower basis than prevails in some other sections of the country.

32. Q. Do you consider that the rates established by the Georgia railroad commission as reasonable and just?

A. I believe they are in many cases lower than the carriers would be warranted in making.

33. Q. Therefore you think they are unreasonably low in many cases?

A. No, sir; I do not mean that. They can be lower than they would be warranted in making them, and yet not unreasonably low.

34. Q. Are the rates from New York and other Northeastern cities to Opelika reasonable in and of themselves, considered solely from the standpoint of the carrier? That is, do they pay the cost of the service of carriage, and yield the carrier a reasonable compensation over and above that cost?

A. I think they do.

35. Q. Would higher rates from New York and other Northeastern cities to Opelika be charged but for competition?

A. I am inclined to believe they would.

36. Q. If the other roads or lines reaching from New York and other Northeastern cities to Opelika, and competing for the traffic from New York and other Northeastern cities to Opelika made no higher charges for the shorter hauls to intermediate points than for the longer hauls over the same line to Opelika, but charged rates to Opelika reasonably high and remunerative, over and above the expense of the service of carriage, would the line involved in this case be compelled to make such greater charge for the shorter haul to Newnan, Grantville, Hogansville, La Grange, and West Point than to Opelika in order to retain its share of the business?

A. I do not know that they would be compelled, but they would be very apt to do so.

37. Q. If the rates from New York and other Northeastern cities to Opelika, over the line involved in this case, were advanced so as to make them not less than the rates now charged to the intermediate points, Newnan, Grantville, Hogansville, La Grange, & West Point, and the rates on all the other lines from New York and other Northeastern cities to Opelika were also so advanced, would there result any diversion of traffic from the lines involved in this case to such other lines?

A. It would tend to divert traffic from New York and other
177 Eastern cities to points of production in other sections of the country, and I believe that would be the result.

38. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter being included in the longer, were observed by all the roads or lines, from a given point to a given point, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of the traffic and prevent diversion of traffic to other roads and lines?

A. To charge no more for a shorter than for the longer distance in our Southern territory, and accomplish this by advancing the rate to what may be termed the "common points" to the figures now in effect to the intermediate points near by, would, in my opinion, result, if not in bankruptcy to the roads, in seriously embarrassing most of them, for it would deprive these roads from competing for traffic to practically all the common points against the coastwise and other transportation lines. If accomplished by reducing the rates to the intermediate points to what I may term the "common points," the reduction of earnings in consequence would unquestionably bankrupt the most of the Southern roads, if, in fact, there would be any exceptions.

39. Q. My question assumes that the rates by all the lines are equally advanced and the same from a given point to a given point.

A. That can not be accomplished because of uncontrollable and, in many instances, unlimited water competition.

40. Q. My question includes rates by water lines as well as by rail lines.

A. If it were practicable to advance rates to common points from the various sections of the country by the all rail, part rail, and part water and the all-water lines to intermediate points near by there could be no material diversion of traffic to any one particular transportation line.

41. Q. Is a rate reasonable in itself from the carrier's standpoint which does not yield to the carrier a proper remuneration in excess of the cost of service?

A. I do not believe carriers make those kind of rates.

42. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. Taking the Louisville & Nashville Railroad as an illustration, amongst the thousands of tons of freight that moves every day from all of its points it is impossible to say what is the cost of transportation of any particular commodity between any two given points.

178 42½. Q. I will repeat the question. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. As I stated in my answer to the previous interrogatory, it is impossible to ascertain the cost of transportation on any one article between any two points, and hence it is impossible to consider that feature in judging whether a rate is remunerative.

43. Q. Is it impossible, then, to determine whether or not a rate is reasonably remunerative?

A. Experience enables traffic men to judge whether a rate is remunerative or unremunerative without considering any particular items of cost of transportation.

44. Q. Is it impossible to determine whether a given rate pays anything in excess of the cost of service of carriage?

A. No, sir; our experience enables us to judge whether a rate is remunerative or not, but we can not state at any time to what extent any one particular rate be remunerative.

45. Q. Does not cost or expense of service of transporation depend largely, or to some extent, on the length of the haul, other things being equal?

A. Yes, sir. It costs more to handle certain freight five hundred miles than it would cost to handle the same freight under similar circumstances and conditions two hundred miles.

46. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir; it takes longer to run a greater than a shorter distance.

47. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

48. Q. Other things being equal, is not the wear and tear on locomotives, cars, tracks, and roadbed, etc., greater the greater the length of the haul?

A. I suppose it is.

49. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. All these expenses for a road five hundred miles long are greater than for a road one hundred miles, although the expense per mile may not be greater.

50. Q. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short one?

179 A. That depends upon the difference in the length of the longer and the shorter road.

51. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested in taxes, greater the greater the length of the road?

A. It costs more to build a road five hundred miles long than one one hundred miles, and yet the cost per mile may be no greater in the one instance than in the other.

52. Q. Is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of one hundred miles give a shipper more extended markets for his goods or products than one of fifty miles?

A. A shipper located at a point that has a railroad reaching a territory of one hundred miles has a better chance at distributing than a merchant located at a point having only fifty miles of road.

53. Q. Are not the through rates to Newnan, Grantville, Hogansville, La Grange, and West Point made up of the through rates to either Atlanta or Opelika plus the local rates either on to or back to those intermediate points, as the case may be?

A. Grantville, Hogansville, and La Grange rates are made on the Atlanta combination and West Point on the Opelika combination.

54. Q. You mean combination of through and local rates?

A. Yes, sir. Newnan is made less than the combination either on Atlanta or Opelika.

55. Q. That is because there are other roads reaching to Newnan, is it not?

A. I am not familiar with the reasons that compel a lower adjustment of the combination to that point.

56. Q. Is not the expense of the carrier of strictly local hauls greater per ton per mile than on long through hauls for the same distance?

A. It costs considerably more to handle local than through traffic.

57. Q. Are not the rates by all the lines from New York and other Northeastern cities to Opelika the same?

A. I believe they are.

58. Q. Are not those the rates that were in force when the Southern Railway & Steamship Association was in existence?

A. Yes, sir.

59. Q. Were not those rates promulgated by the Southern Railway & Steamship Association with the consent of carriers members of that association.

180 A. Yes, sir.

60. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio River?

A. Since 1882.

61. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce, in 1887, except in cases of competition in transportation to the longer distance point?

A. I do not recall any particular case, but competition between markets and markets and between products and products would naturally be considered, as well as competition between transportation lines.

62. Q. Where there is competition between markets and markets and products and products is there not also always competition in transportation present?

A. No, sir. For instance, the Louisville & Nashville Railroad is the only line from Nashville to Birmingham, and yet to enable Nashville to sell at Birmingham as against competing markets it is necessary to make lower rates than otherwise would be the case. The same is true from Nashville to Chattanooga, the Nashville, Chattanooga & St. Louis Railway being the only line from Nashville to Chattanooga.

63. Q. In the case of the Birmingham, what competing markets with Nashville do you refer to? Name one of them.

A. Memphis, Louisville, Cincinnati—all markets north and west thereof reached through those crossings and markets in other producing sections of the country.

64. Q. In transporting goods from Nashville to Birmingham does not the Louisville & Nashville Railroad come in competition with lines from the competing market from Memphis to Birmingham?

A. Yes, sir.

65. Q. Is there not, then, competition in transportation as well as in markets?

A. Nashville coming in competition with Memphis as a market, necessarily the Louisville & Nashville Railroad from Nashville to Birmingham comes in competition with the lines running from Memphis to Birmingham.

66. Q. Therefore I ask you if competition in transportation is not always present where there is competition of markets and of products with products?

A. There is, as a rule.

181 67. Q. Can you imagine a case where this is not so?

A. I have none in mind at present.

Redirect examination by Mr. BAXTER:

1. Q. When you speak of the cost of service or of the cost of the service of carriage, in your cross-examination, do you refer to the total estimated cost of transportation, or only to the additional cost of movement or a particular traffic?

A. I refer to the additional cost of movement.

2. Q. When you speak in your cross-examination of a rate being remunerative, do you mean that it pays a profit over the total estimated cost of transportation, or do you mean only that it pays some profit over the additional cost of movement of a particular traffic?

A. I mean it pays some profit over the additional cost of movement.

3. Q. How long has it been since the Southern Railway & Steamship Association was in existence?

A. Two or three years.

4. Q. Where the freight rate constitutes a large percentage of the value of an article, will the material reduction of the freight rate increase the consumption of that article?

A. It would tend to do so.

5. Q. Where the freight rate constitutes only a small percentage of the value of an article, will the reduction of the freight rate necessarily increase the consumption of the article?

A. It would not.

6. Q. Suppose it were possible to get all of the railroad lines which operate south of the Ohio and east of the Mississippi to agree to increase their rates to the competitive points so as to make them as high as their rates to noncompetitive points; what effect would such increase of the above rates have upon the traffic and the revenue of those railroads?

A. It would, in my opinion, practically exclude the rail lines from competing for traffic to competitive points, the increase in the rates causing it to be diverted to the numerous, aggressive, and in many instances uncontrollable water transportation lines.

7. Q. Can you make any approximate estimate as to what per cent of the freight revenue realized by the railroads referred to in my last question is derived from the above traffic as contradistinguished from the noncompetitive traffic?

182 A. Competitive traffic forms a very large percentage of the total traffic, but I could not approximate just what the percentage is.

8. Q. Would it be as much as fifty per cent or forty per cent or sixty per cent, in your opinion?

A. The records of the Louisville & Nashville Road would enable me to answer definitely so far as the Louisville & Nashville Road is concerned, but I do not have them with me.

9. Q. Suppose, if it were possible, that all of the railroads in the territory referred to did agree to reduce their noncompetitive rates so as not to be higher than their competitive rates—in other words, agree upon the rule in no instance to charge more for a short than a long haul—what effect would that have upon the revenue of those roads?

A. It would reduce the revenue to such an extent as to bankrupt them.

10. Q. You spoke just now about traffic being diverted from the rail lines to the water lines at competitive points. If you have any statement referring to the movement of such traffic, please file it and explain it.

A. I have a statement showing that from May 20th, 1897, to June 20th, 1897, one coastwise line handled 183 car loads of freight into Charleston, South Carolina, most of this freight having originated at western points—as far west as Minneapolis, Minnesota.

11. Q. Are the points of origin referred to in said statement south or north of the Ohio River?

A. North of the Ohio River.

12. Q. How did the traffic referred to in said statement move to the seacoast so as to be transported by the coastwise lines?

A. It moved from the points of origin to New York.

13. Q. By rail or by water?

A. I am unable to say whether it was moved all rail or part rail and part water. On business from western points to New York there is considerable competition, including the lake and canal competition.

14. Q. Do you know to what points the traffic referred to in said statement was destined?

A. It was all consigned to Charleston, and I do not know how much of it was reconsigned to interior points. Charleston, of course, is a distributing point for considerable interior territory, and it is reasonable to assume that much of it found its way to the interior.

15. Q. The said statement shows the points of origin and the number of cars and the tons, does it not?

183 A. Yes, sir.

16. Q. Please file this as Exhibit No. 2 to your deposition.

A. Yes, sir; I file it herewith.

(The statement referred to is hereto attached, marked Exhibit No. 2.)

(Counsel for the commission objects to the introduction of this statement.)

Recross-examination by Mr. SHAVER:

1. Q. Did you prepare the statement marked Exhibit No. 2, filed in connection with your answer to redirect interrogatory No. 16?

A. I did not personally prepare it.

2. Q. Have you any personal knowledge of the facts set forth in that exhibit?

A. I do not know of my own personal knowledge that the traffic moved, but it has been compiled from authentic records.

3. Q. Who compiled it?

A. The general freight agent of the Georgia Railroad.

4. Q. Did you see him prepare it?

A. No, sir; he submitted it over his personal signature.

5. Q. To you?

A. To the general freight agent of the Louisvil'e & Nashville Railroad.

6. Q. You know all that by hearsay, do you not?

A. I know it from the record that was submitted me *me* in my capacity as traffic manager of the Louisville & Nashville Railroad.

7. Q. Do not Newnan, Grantville, Hogansville, La Grange, and West Point enjoy the benefit of water transportation from New York and other Eastern cities by ocean, and West Point enjoy the benefit of water transportation from New York and other Eastern cities by ocean to Charleston and other South Atlantic ports?

A. So far as the carriage of freight up to Atlanta and Opelika are concerned Newnan, Grantville, Hogansville, La Grange, and West Point have the benefit of the competition that has compelled existing rates to Atlanta and Opelika proper.

8. Q. The bulk of the traffic from New York and other Eastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point, as well as to Atlanta and Opelika, is transported by ocean from New York and other Eastern cities to the South Atlantic ports of Charleston, etc., and thence by rail lines, is it not?

184 A. The Louisville & Nashville road does not compete for the traffic, and I have no detailed information as to via just what routes it does move.

9. Q. What water routes are there to Opelika from New York and other Eastern cities?

A. I have named the lines in my answer to one of the first direct interrogatories.

10. Q. Is Opelika or Atlanta on any navigable stream or body of water?

A. No, sir.

11. Q. Can not the part rail and part water lines from New York and other Eastern cities to Opelika and Atlanta be formed also to Newnan, Grantville, Hogansville, La Grange, and West Point, with the Atlanta & West Point and the Western Railway of Alabama as terminal carriers?

A. The lines competing for Opelika and Atlanta traffic can reach the points named in connection with the terminal lines.

12. Q. You stated in your redirect examination that to reduce the rates to the shorter distance points so as to make them as low as the rates to the longer distance points in Southern territory would bankrupt the carriers. Has it had that effect on the Eastern roads which make no greater charge for the shorter than the longer haul over their lines?

A. I do not know to what extent it has embarrassed Eastern roads, but there is no similarity between the conditions affecting the Eastern roads and Southern roads.

13. Q. Do the Eastern roads make any greater charges for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer?

A. I have no personal knowledge of the exceptions they make.

Redirect examination by Mr. BAXTER:

1. Q. Is not the rule in the territory north of the Ohio between New York and Chicago to group all of the noncompetitive stations that may be situated between two competitive stations, and to charge each and all of the noncompetitive stations the rates to the competitive station beyond?

A. It is.

Re-recross-examination by Mr. SHAVER:

1. Q. Under that rule, there is no greater charge for the shorter than the longer haul over the same line in the same direction?

A. As I said, I have no personal knowledge of the exceptions that are made.

185 2. Q. You have just stated that the rule was to make the same rates to intermediate points as to competitive points beyond, I believe.

A. I have testified that in making rates from New York to points in the territory north of the Ohio River the points are grouped, having the effect of charging to the intermediate points the same rate as to the competitive point beyond, but I do not personally know what exceptions are made to the rule.

(Witness here stated that he desired to amend his answer to cross-question No. 67, as follows):

Competition between transportation lines is not always present where there is competition between markets; as, for instance, in the making of

rates from markets of production to markets of consumption between which there is but one line and which involves competition with the product that is found or manufactured at the consuming point.

NASHVILLE, TENN., *July 11, 1897.*

C. B. COMPTON, a witness on behalf of the defendants, having been duly sworn, testified as follow':

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. C. B. Compton; age, 43; residence, Louisville, Ky.; general freight agent of the Louisville & Nashville Railroad Company.

2. Q. How long have you been engaged in the railroad freight transportation business, and in what capacity?

A. I have been continuously in the employ of the Louisville & Nashville Railroad since August 1st, 1871, in various capacities, amongst which are local freight agent, contracting freight agent, general agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of the like kinds of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, La Grange, and West Point more than to Opelika. The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, La Grange, West Point, and Opelika were in 1892 as follows:

186 [Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	78	....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	94	....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	97	....
La Grange, Ga	154	135	118	102	82	66	....	....	....	....	....	99	....
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	88	....
Opelika, Ala	114	98	86	73	60	49	36	43	40	30	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, La Grange, and West Point, so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. In my opinion, a reduction in the rates to the points named would not increase the volume of traffic while decreasing the revenue of the carrier to the extent of the reductions as made on the value of traffic moving under each of the several classes. There are but two ways of increasing the movement of traffic to a particular point: First, by an increase in the consumption at that point, and, second, by making such point a distributing or jobbing center. As to increasing the consumption at Newnan, Grantville, Hogansville, La Grange, and West Point, it stands to reason that such a result would not follow from a reduction in the rates, and if the rates to those points were reduced, such reductions would not increase the territory open for distribution.

4. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-named mentioned classes of freight from New York, Philadelphia, etc., to Opelika, Alabama.

A. You ask what lines actually and actively competed in 1892 and now compete from New York, Philadelphia, Baltimore, etc., in transportation to Opelika, Alabama, of classified freight. It is probable that if all the combinations were named it would exceed one hundred. It may be well to enumerate the following:

187 From Boston:

Direct steamer lines to Savannah, controlled by the Ocean Steamship Company.

Lines of steamers and rail lines to New York, connecting with direct steamer lines from New York to Norfolk, Richmond, West Point, Charleston, Savannah, and Brunswick.

And also the Merchants & Miners' Transportation Company from Boston to Norfolk and West Point and to Baltimore.

At Baltimore the Merchants & Miners' Transportation Co. connects with its line of steamers to Savannah.

From New York:

The Ocean Steamship Company to Savannah.

The Clyde Line to Charleston.

The Mallory Line to Brunswick.

The Old Dominion Steamship Company to Norfolk.

The Old Dominion Steamship Company to Portsmouth.

The Old Dominion Steamship Company to West Point and Richmond.

The Pennsylvania Railroad via Harrisburg and Hagerstown.

The Pennsylvania Railroad via Alexandria.

The New Jersey Central Railroad, in connection with the Reading Railroad, via Hagerstown.

The New Jersey Central Railroad, in connection with the Baltimore & Ohio Railroad, via Baltimore.

From Philadelphia:

The Ocean Steamship Company to Savannah,

The Clyde Line to Charleston,

The Pennsylvania Railroad via Norfolk,

The Pennsylvania Railroad via Alexandria,

The Pennsylvania Railroad via Hagerstown,

The Baltimore & Ohio Railroad via Baltimore, and

The Baltimore & Ohio Railroad via Shenandoah Junction.

From Baltimore:

The Bay Line of steamers to Norfolk.

The Merchants & Miners' Transportation Co. to Savannah.

The Eastern Maryland Railroad via Hagerstown.

The Baltimore & Ohio Railroad via Shenandoah Junction.

The Baltimore & Potomac Railroad via Alexandria.

In addition to the regular lines, some of which have been named above, actively competing from Eastern cities, there should be considered the sailing vessels from Boston, New York, Philadelphia, and Baltimore to south Atlantic ports.

188 I have named above the different initial lines competing in connection with the various rail connections to Atlanta.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from other cities than New York and Philadelphia.

A. You ask what lines actually and actively competed in 1892 and now compete for the transportation of classified freights to Opelika from other cities than New York, Philadelphia, etc. I understand from the question that you refer to the Ohio River cities, and my answer is as follows:

From Cincinnati:

Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, thence Southern Railway and the Atlanta & West Point Railroad.

The Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, thence via the Western & Atlantic and the Atlanta & West Point Railroad.

The Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, thence via the Alabama Great Southern Railroad to Birmingham, thence via Central Railroad of Georgia.

Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, Chattanooga, Rome & Columbus to Kramer, thence via Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

The Louisville & Nashville Railroad to Birmingham, thence via Central Railroad of Georgia.

The Louisville & Nashville Railroad to Montgomery, thence via Western Railway of Alabama.

The Louisville & Nashville Railroad to Montgomery, thence via Central Railroad Company of Georgia.

Baltimore & Ohio Southwestern Railroad to Louisville, Illinois Central to Memphis, Memphis & Charleston to Chattanooga, Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

Baltimore & Ohio Southwestern to Louisville, Illinois Central Railroad to Memphis, Memphis & Charleston to Chattanooga, Western & Atlantic to Atlanta, thence via Atlanta & West Point Railroad.

The Baltimore & Ohio Southwestern to Louisville, Illinois Central Railroad to Memphis, Memphis & Charleston to Chattanooga, Chattanooga, Rome & Columbus Railroad to Kramer, Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

189 The Baltimore & Ohio Southwestern to Louisville, Illinois Central Railroad to Memphis, Kansas City, Memphis & Birmingham Railroad, thence via Central Railroad of Georgia.

From Louisville:

The Louisville & Nashville to Birmingham, thence via Central Railroad of Georgia.

The Louisville & Nashville Railroad to Montgomery, thence via Western Railway of Alabama.

The Louisville & Nashville Railroad to Montgomery, thence via Central Railroad of Georgia.

The Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific

Railroad to Chattanooga, Western & Atlantic Railroad to Atlanta, thence via Atlanta & West Point Railroad.

Southern Railway to Burgen, Cincinnati, New Orleans & Texas Pacific Railroad to Chattanooga, Chattanooga, Rome & Columbus to Kramer, Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

The Illinios Central to Memphis, Memphis & Charleston to Chattanooga, Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central Railroad to Memphis, Memphis & Charleston to Chattanooga, the Western & Atlantic to Atlanta, thence via Atlanta & West Point Railroad.

The Illinois Central to Memphis, the Memphis & Charleston Railroad to Chattanooga, Chattanooga, Rome & Columbus Railroad to Kramer, the Southern Railway to Atlanta, thence via Atlanta & West Point Railroad, and

The Illinois Central Railroad to Memphis, Kansas City, Memphis & Birmingham Railroad to Birmingham, thence via Central Railroad of Georgia.

From Evansville & Henderson:

The Louisville & Nashville Railroad to Birmingham, thence via Central Railroad of Georgia.

The Louisville & Nashville Railroad to Montgomery, thence via Western Railway of Alabama.

The Louisville & Nashville Railroad to Montgomery, thence via Central Railroad of Georgia.

The Ohio Valley Railroad to Princeton, the Illinois Central to
190 Memphis, Memphis & Charleston to Chattanooga, the Southern Railway to Atlanta, thence via Atlanta & West Point Railroad.

Ohio Valley Railroad to Princeton, the Illinois Central to Memphis, the Memphis & Charleston to Chattanooga, the Western & Atlantic Railroad to Atlanta, thence via the Atlanta & West Poist Railroad.

The Ohio Valley Railroad to Princeton, the Illinois Central Railroad to Memphis, Memphis & Charleston Railroad to Chattanooga, Chattanooga, Rome & Columbus Railroad to Kramer, the Southern Railway to Atlanta, thence via the Atlanta and West Point Railroad.

The Ohio Valley Railroad to Princeton, the Illinois Central Railroad to Memphis, the Kansas City, Memphis & Birmingham, thence via Central Railroad of Georgia.

From Paducah:

Nashville, Chattanooga & St. Louis Railway to Nashville, Louisville & Nashville Railroad to Birmingham, thence via Central of Georgia Railroad.

The Nashville, Chattanooga & St. Louis Railway to Nashville, the Louisville & Nashville Railroad to Montgomery, thence via the Western Railway of Alabama.

The Nashville, Chattanooga & St. Louis Railway to Nashville, the Louisville & Nashville Railroad to Montgomery, thence via the Central of Georgia Railroad.

The Illinois Central to Memphis, the Memphis & Charleston Railroad

to Chattanooga, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central Railroad to Memphis, the Memphis & Charleston Railroad to Chattanooga, the Western & Atlantic Railway to Atlanta, thence via Atlanta & West Point Railroad.

The Illinois Central Railroad to Memphis, the Memphis & Charleston to Chattanooga, the Chattanooga, Rome & Columbus Railroad to Kramer, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central Railroad to Memphis, Kansas City, Memphis & Birmingham Railroad to Birmingham, thence via the Central of Georgia Railroad.

From Cairo:

The Nashville, Chattanooga & St. Louis Railway to Nashville, the Louisville & Nashville Railroad to Birmingham, thence via Central of Georgia Railroad.

The Nashville, Chattanooga & St. Louis Railway to Nash-
191 ville, the Louisville & Nashville Railroad to Montgomery, thence via Western Railway of Alabama.

The Nashville, Chattanooga & St. Louis Railway to Nashville, the Louisville & Nashville Railroad to Montgomery, thence via the Central of Georgia Railroad.

The Illinois Central Railroad to Grand Junction, the Memphis & Charleston to Chattanooga, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central Railroad to Grand Junction, the Memphis & Charleston Railroad to Chattanooga, the Western & Atlantic Railroad to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central Railroad to Grand Junction, the Memphis & Charleston to Chattanooga, the Chattanooga, Rome & Columbus Railroad to Kramer, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Illinois Central to Holly Springs, the Kansas City, Memphis & Birmingham Railroad to Birmingham, thence via the Central of Georgia Railroad.

The Illinois Central Railroad to Winona, the Southern Railway to Birmingham, thence via the Central of Georgia.

The Illinois Central Railroad to Jackson, the Atlanta & Vicksburg to Meridian, the Southern Railway to Selma, thence via the Western Railway of Alabama.

The Illinois Central Railroad to Jackson, the Southern Railway to Meridian, the Alabama Great Southern to Birmingham, thence via the Central of Georgia Railroad.

The Mobile & Ohio Railroad to Corinth, the Memphis & Charleston Railroad to Chattanooga, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Mobile & Ohio Railroad to Corinth, the Memphis & Charleston Railroad to Chattanooga, the Western & Atlantic Railroad to Atlanta, thence via the Atlanta & West Point Railroad.

The Mobile & Ohio Railroad to Corinth, the Memphis & Charleston Railroad to Chattanooga, the Chattanooga, Rome & Columbus Railroad

to Kramer, the Southern Railway to Atlanta, thence via the Atlanta & West Point Railroad.

The Mobile & Ohio Railroad to Tupelo, the Kansas City, Memphis & Birmingham Railroad to Birmingham, thence via the Central of Georgia Railroad.

The Mobile & Ohio Railroad to West Point, the Southern Railway to Birmingham, thence via the Central of Georgia Railroad.

The Mobile & Ohio Railroad to Lauderdale, the Southern
192 Railway to Selma, thence via the Western Railway of Alabama.

The Mobile & Ohio Railroad to Meridian, the Alabama Great Southern to Birmingham, thence via the Central of Georgia Railroad.

The lines actually and actively competing in the transportation of classified freight to Opelika from sections of the country other than Ohio River points, and other than New York, Philadelphia, etc., are too numerous to mention, comprising all roads north of the Ohio and west of the Mississippi rivers, in connection with the various routes already named from the Ohio River crossings.

6. Q. State whether the rates on the above-mentioned classes of freight from New York, Philadelphia, via Charleston, Augusta, and Atlanta to Opelika are controlled to any, and if so, to what, extent by competition.

A. The rates from New York, Philadelphia, etc., to Opelika are made by coastwise steamers and sailing vessels to South Atlantic coast points and thence by rail to Opelika. Through rates so fixed are operated by the numerous routes which actively compete with each other for traffic, and it may be said, therefore, that the rates on classified freights from New York, Philadelphia, etc., to Opelika are controlled entirely by competition.

7. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and West Point are just or unjust, reasonable or unreasonable. Please give your reasons for any opinion you may express.

A. In my opinion, said rates are just and reasonable. They are just and reasonable because they are based on either Atlanta or Opelika, and under them business from New York, Philadelphia, etc., moves freely and in competition with other markets, and for the further reason that they are as low as can be obtained by any other mode of transportation.

8. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. The competition between carriers whether by rail or by water substantially affects the circumstances and conditions under which the transportation of freight is conducted. To illustrate, the short-line distance from Cincinnati to Lexington, Kentucky, is via the Cincinnati, New Orleans, and Texas Pacific Railroad, the distance being eighty-two miles; the line of the Louisville & Nashville Railroad being one hun-
193 dred and fifty miles via Lagrange, Kentucky. It is a self-evident proposition that if the Louisville & Nashville Railroad wishes to compete in the handling of the traffic from Cincinnati to Lexington, it must do so at no higher rates than those made by the Cincinnati, New Orleans & Texas Pacific Railroad over the short line. The

effect of this, so far as the Louisville & Nashville Railroad may be concerned, is that by reason of meeting from Cincinnati to Lexington the rates made by the Cincinnati, New Orleans & Texas Pacific Railroad it is necessary to make on the Lexington combination to some points on the Louisville & Nashville Railroad near by Lexington less rates than would otherwise be applied.

Again, the rates from Louisville, Kentucky, to Paducah, Kentucky, all rail, are made in competition with steamboats plying on the Ohio River, the cheap water transportation fixing the maximum rates that can be charged by the all-rail lines; that is to say, unless the all-rail lines meet the all-water competition, they would not be able to enjoy any portion of the traffic moving from Louisville to Paducah. The effect of this is to make the rates to points near by Paducah on the all-rail lines on the Paducah combination less than would otherwise be applied, though without direct water competition themselves, they have the benefit of water competitive rates for much the greater portion of the haul.

9. Q. State whether the number of tons carried one mile, or the number of tons carried of freight-earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, can either jointly or separately be used as a standard in railroad rate making.

A. The number of tons carried one mile, or the number of tons carried of freight-earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile can not be used, either singly or together, as the standard in railroad rate making.

For example, when called upon to make a line of rates from a given point to another, it is necessary to establish rates on all classes that would or could move. Having no possible means of determining the relative tonnage that might move in each class, or of averaging the total tonnage that might move in all classes, or of determining what proportion such tonnage under all the classes would be of the entire tonnage handled by the roads during any given period of time, the rate per ton per mile, could not in any way be considered in fixing such rates.

10. Q. Do you know or can you set forth any other matter or
194 thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross-examination by Mr. SHAVER:

1. Q. I notice, Mr. Compton, that in answering the direct interrogatories, you read from a manuscript before you. How long have you had the interrogatories in this case?

A. I can not give you the exact date that I first saw the interrogatories, but I would say about two weeks.

2. Q. How long ago did you prepare these answers?

A. These answers were prepared from data worked up by me personally after the receipt of the interrogatories from Mr. Baxter.

3. Q. You say that a named reduction in rates to Newnan, Grantville, Hogansville, Lagrange, and West Point would not, in your opinion, increase the business to those points, I believe, did you not?

A. I did.

4. Q. Would not such reductions make the rates to those points not higher than the rates to Opelika and Atlanta?

A. They would.

5. Q. Is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. I do not quite understand what you mean by a "material reduction" in rates. However, I would say that a reduction in the rates to Newnan, Grantville, Hogansville, Lagrange and West Point to the same as the rates in effect to Opelika would not increase the traffic.

6. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement and the investment of capital at said point and the increase of its population?

A. I do not believe that a reduction in the rates from New York, Philadelphia, etc., to Grantville, Newnan, Hogansville, Lagrange and West Point to the same figures as in effect to Opelika would increase the population at either of those points.

7. Q. Would not the tendency be to increase the population and also encourage the investment of capital there?

A. I think not.

8. Q. The rate on first-class traffic from New York over the
195 line involved in this case to Lagrange is $1.54 and for the haul through Lagrange on to Opelika it is $1.14, making a difference of forty cents in favor of Opelika. Would not a reduction of forty cents be a material reduction, in your opinion?

A. In my opinion, a reduction in the rates from New York to Lagrange, Georgia, of forty cents per hundred pounds, which is equal to 26%, would be a material reduction in the rate.

9. Q. Is not the natural effect of unfavorable rates to or discrimination against a given point to injure the mercantile and other business interests of such point and to prevent and retard its growth and prosperity?

A. In my opinion an unjust discrimination in the adjustment of rates to a given point would have a tendency to retard the growth of a town or city.

10. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. In my opinion, if two cities are situated substantially similarly, an unjust or unfair adjustment in rates in favor of one as against the other would have the effect of hurting the mercantile interests of the other.

11. Q. Do not merchants at Opelika trade at West Point and Lagrange and in adjacent territory in competition with local merchants at West Point and Lagrange?

A. I have no personal knowledge of the extent to which the merchants at Opelika would sell goods to the points named; but I would say that it is reasonable to assume that the merchants at Opelika would sell goods to the merchants at the points named.

12. Q. Will not a reduction of rates from New York and other Eastern cities to West Point and Lagrange, so as to make them not higher than the rates on the haul from those cities through West Point and Lagrange to Opelika, enable the merchants at West Point and Lagrange

to compete more successfully with the merchants at Opelika for business at West Point and Lagrange than under the existing system of rates?

A. In my opinion a reduction in the rates from New York to the points named would not increase the value of the traffic nor would the reduction enable the merchants at those points to increase their trade.

13. Q. My question was whether it would enable those local merchants at West Point and Lagrange to compete more successfully with
196 the Opelika merchants for the business at West Point and Lagrange and in surrounding territory. What is your opinion about that?

A. The territory tributary to the points named is circumscribed, and in my opinion a reduction in the rates would not materially affect the business done at those points.

14. Q. Is that the only answer you can give to that question?

A. Yes, sir.

15. Q. Do not merchants at Atlanta trade at Newnan, Grantville, Hogansville, and in adjacent territory in competition with local merchants at those points?

A. I do not know from personal knowledge to what extent Atlanta sells goods to merchants at the points named, but it is reasonable to suppose that Atlanta does sell goods to the merchants at the points named. I do not believe that the merchants in Atlanta sell goods to consumers at the points named in competition with the merchants at the points named.

16. Q. Would not rates to Newnan, Grantville, Hogansville, Lagrange, and West Point from New York and other Eastern cities not higher than the rates to Opelika and Atlanta cause the merchants at those intermediate points to obtain their supplies direct from New York and other Eastern cities instead of obtaining them, as they now do to a certain extent, from Atlanta and Opelika?

A. It is my understanding that the merchants at Grantville, Hogansville, Lagrange, and West Point do now purchase goods direct from New York, Philadelphia, etc., and I do not believe that they would trade to any greater extent with New York, Philadelphia, and Baltimore if the rates were reduced than they do at the present time.

17. Q. What is your reason for that belief?

A. The reason for that belief is that the consumption would not be increased. The rates from the East are made on the rate to Atlanta or Opelika with locals added, with the exception to the rates to Lagrange. The rates being thus made gives to the merchant at the point named the benefit of the competition to Atlanta or the competition to Opelika.

18. Q. You stated that it was your opinion that the Atlanta merchants did not sell goods to consumers at Newnan, Grantville, and Hogansville, but to the merchants at those points. If the merchants at those points could get their goods at the same rates from New York and other Eastern cities as the merchants at Atlanta get them, would not that tend to prevent the merchants at Newnan, Grantville, and Hogansville
197 from buying their goods from Atlanta to the extent which you say they now do?

A. If the rates from New York, Philadelphia, Baltimore, etc., were made the same to Grantville, Hogansville, Lagrange, and West Point, as to Atlanta and Opelika, the merchants at those points might purchase

in greater volume from such cities than they do at present, but in my opinion the merchants at the points named would not all buy direct from eastern cities, because the merchants at Atlanta are enabled on account of their location to give more prompt shipment than in the case from the merchant from the East.

19. Q. Do not goods from New York and other Eastern cities on the route involved in this case have to be shipped through these intermediate points to Opelika?

A. Yes, sir.

20. Q. Is not that the route by which the bulk of the traffic comes from New York and other Eastern cities to Opelika?

A. The Louisville & Nashville Railroad, with which I am connected, does not compete for business from New York, Philadelphia, and Baltimore to Opelika, Alabama, and therefore I am unable to give a specific answer to your question.

21. Q. Do not rates enter into and affect the price of goods?

A. I do not believe that a reduction in the rates of first-class goods from New York to the points named to the same figures as in effect to Opelika would affect the price at which goods would be sold by merchants at Grantville, Hogansville, etc.

22. Q. I did not ask you in reference to Grantville, Hogansville, etc., but my question was general. As a general proposition, do not rates enter into and affect the price of goods?

A. I do not believe that I can give you a specific answer to a general question. But my answer to the interrogatory just propounded is given in the particular case involved.

23. Q. Are you unable to answer this general question?

A. To give an answer to a general question would be very hard to do; but if a material reduction in the rates on flour, meal, or grain to any given point were made, I would answer that a reduction in the rates might affect the price of the same.

24. Q. Do not lower prices bring goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. I do not believe that a reduction in the rates would increase the consumption.

198 25. Q. That is not an answer to my question. I ask you if lower prices of goods do not bring those goods within the reach of a greater number of people and thus increase the consumption of the goods?

A. I do not believe that the consumption of goods can be increased; therefore, a reduction in the rates would not make any material change.

26. Q. In your direct examination you named a number of lines from New York and other cities which could be formed to Opelika, and which you state compete for business to Opelika. Can not all those lines be formed also to Newnan, Grantville, Hogansville, Lagrange, and West Point by combinations with either the Atlanta & West Point Railroad or the Western Railroad of Alabama as terminal carriers?

A. The lines that I have named as competing for business from New York, Philadelphia, and Baltimore to Atlanta and Opelika could not, in my opinion, all compete for traffic to Grantville, Hogansville, Lagrange, and West Point.

27. Q. I did not ask whether they could all compete, but whether they could all be formed by combination with the Western Railway of Alabama or the Atlanta & West Point Railroad as the terminal carriers?

A. Yes, sir.

28. Q. You stated that a hundred combinations, or that combinations exceeding a hundred, might be made from New York and other Eastern cities to Opelika. Can not the same number of combinations be made to these intermediate points?

A. Yes, sir.

29. Q. Is not the number of combinations, if you go far enough around from the direct route, of lines which can be made between two given points almost unlimited?

A. Yes, sir.

30. Q. Do not all the lines that you have named from New York and Eastern cities to Opelika have the same rates to Opelika?

A. It is my information that all the lines leading from New York and Philadelphia and Baltimore have in effect the same rate to Opelika?

31. Q. Have not all those lines the same rates to Newnan, Grantville, Hogansville, Lagrange, and West Point respectively?

A. Yes, sir.

32. Q. Is not traffic transported over those lines from New York and Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point under through bills of lading and under through rates?

199 A. That is my information.

33. Q. What are your duties as general freight agent of the Louisville & Nashville road?

A. My duties as general freight agent of the Louisville & Nashville road, under the direction of its traffic manager, is to supervise its freight traffic and to make rates on freight traffic.

34. Q. Are not rates necessarily expressed in figures?

A. Yes, sir.

35. Q. In making up a rate to a given point—for instance, from New York to Opelika, which has a rate of $1.14 on first-class traffic—do you not first determine in figures or numbers what is the cost of carriage?

A. The Louisville & Nashville Railroad does not compete for business from New York, Baltimore, and Philadelphia to Opelika.

36. Q. In determining what the rate shall be between two points on the Louisville & Nashville road, do you not first ascertain in figures or numbers the cost of the service of carriage?

A. The cost of the transportation of freight is an unknown quantity; it would therefore be impossible to consider the cost in connection with fixing a rate.

37. Q. You stated in your direct examination that the rates involved in this case from New York and Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and Westpoint were reasonable, and as grounds for that opinion you stated that the traffic moved freely under them and they were as low as could be obtained by any other mode of transportation. What other mode of transportation did you refer to or have in mind?

A. I had in mind transportation by any mode other than that known as common carriers.

38. Q. Did you have in mind transportation by wagons and teams?

A. Yes, sir.

39. Q. In your opinion, is not the test of the reasonableness of the rate whether traffic will move under it and be not diverted from the road or line charging the rate to another road or line?

A. In giving my answer as to the reasonableness of a rate I did not consider the effect of diverting to other lines. I believe a rate is just and reasonable when it permits the free movement of traffic.

40. Q. Are the rates from New York over the line involved
200 in this case for the haul through Newnan, Grantville, Hogansville, Lagrange, and Westpoint to Opelika just and reasonable considered from the standpoint of the carrier—that is, do they pay the cost of the service of carriage and, in your opinion, yield the carrier a reasonable compensation over and above the cost?

A. In my opinion, the rates from New York to Newnan, Grantville, Hogansville, Lagrange, and Westpoint are just and reasonable from the standpoint of the carrier. As to what profit over and above the expense of transportation they yield to the line involved I can not answer—whether they yield a profit or whether they do not yield a profit—having no personal connection with that carrier or any means of ascertaining.

41. Q. Is a rate, in your opinion, reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of service?

A. Speaking as a representative of the Louisville & Nashville Railroad, I have no knowledge of that company having transported property at less than the cost of transportation.

42. Q. Is that the only answer you can give to that question?

A. I would say that any line transporting business at less than the cost of transportation would be making an unreasonably low rate.

43. Q. Is not, therefore, the expense of the service of carriage an element to be considered in determining whether a rate is a reasonable rate or not in and of itself?

A. In the transportation of the immense volume of traffic of the Louisville & Nashville Railroad it is impossible to determine how much traffic would move between any two points in any class or classes, and therefore it is apparent that it is impossible to reach any definite conclusion as to what the cost of carriage would be.

44. Q. Is it, in your opinion, impossible to determine whether a given rate yields a carrier anything in excess of the cost of the service of carriage?

A. In my opinion, it is impossible to ascertain the cost of carriage.

45. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

46. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

201 A. Do I understand what you mean by "other things being equal?"

47. Q. Well, the rate of speed being the same.

A. There might be a great many things taken into consideration. For instance, you might take a railroad that was five hundred miles in length with no grades and have all large trains, and the cost of carriage over that road for five hundred miles might be considerably less than the cost of carriage over a line, say, passing through a mountainous country where the trains have a less number of cars, larger engines being required, the consumption of fuel greater, and the probability of the control of such trains requiring the railroad companies to employ additional help.

48. Q. The phrase "other things being equal" was intended to cover all those features. Will it not require twice the length of time to haul a train one hundred miles than it will require to haul it fifty miles, the rate of speed being the same in both hauls?

A. Yes, sir.

49. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Other things being equal, yes, sir.

49½. Q. Other things being equal, is not the wear and tear on locomotives, cars, tracks, roadbed, etc., greater the greater the length of the haul?

A. Yes, sir; but not proportionately.

50. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. Yes, sir; but not proportionately.

51. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. Yes, sir; but not proportionately.

52. Q. Does not distance add to the cost of building a road and are not, therefore, fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. The conditions with regard to the construction of railroads are entirely different.

53. Q. I said other things being equal.

A. I do not believe it is possible to have an absolute equality in a case of that kind.

54. Q. Does it not cost more to build a road through the
202 same kind of country and at the same grade one hundred miles than fifty miles?

A. No, sir.

55. Q. Are not the rates from New York and other Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and Westpoint made up of the through rates to either Atlanta or Opelika and the local rates either on from Atlanta or back from Opelika, as the case may be, to those intermediate *point* points?

A. The rates from New York, Baltimore, and Philadelphia to Grantville, Hogansville, Lagrange, and Westpoint are arrived at by using the rate from said Eastern cities to Atlanta plus the locals thence, or the rates from the said Eastern cities plus the local rate to Opelika. The rate to Newnan, Georgia, is not made up of the sums of the rate to Atlanta, the local thence, or the rate to Opelika plus the local thence, but is made on first class $1.31. I am not familiar with the construction of the rate to Newnan.

56. Q. Which of those points, Newnan, Grantville, Hogansville, Lagrange, and Westpoint, are on more than one road?

A. Lagrange, Georgia, is on the Atlanta & West Point Railroad and the Macon & Birmingham Railroad.

Newnan, Georgia, is on the Atlanta & West Point Railroad and the Central of Georgia Railway.

57. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than for the same distance on the long through hauls?

A. Yes, sir.

58. Q. Are not the rates to Atlanta and Opelika the same as they were during the existence of the Southern Railway & Steamship Association?

A. Yes, sir.

59. Q. Were they not originally established by agreement between the carriers composing the lines as members of the Southern Railway & Steamship Association?

A. The rates from Eastern cities to Opelika and Atlanta were fixed by the lines which were members of the Southern Railway & Steamship Association.

60. Q. Are not the rates to Newnan, Grantville, Hogansville, Lagrange, and Westpoint the same as they were during the existence of the Southern Railway & Steamship Association?

A. That is my information.

61. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Twenty-six years.

203 62. Q. Has the greater charge for the shorter than the longer hauls over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer distance point?

A. Not to my knowledge.

Redirect examination by Mr. BAXTER:

1. Q. You were asked in cross-question No. 54:

"Does it not cost more to build a road through the same country at the same grade one hundred miles than fifty miles?" and your answer was, "No, sir."

Would not that depend upon whether the roads were of the same gauge, constructed with the same weight of rails, cars, ties, etc., and equipped with the same kind of engines and cars, and built at the same cost of labor and materials?

A. In my answer to cross-interrogatory No. 54 I no doubt misunderstood the question. I would say that it would cost more to build a railroad one hundred miles in length than a railroad fifty miles in length, through the same class of country and the same gauge of road, requiring the same class of equipment with labor the same in both cases.

NASHVILLE, TENN., *July 15, 1897.*

JOSEPH M. BROWN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. Joseph M. Brown; 42nd birthday; my personal residence is Marietta, Georgia, and my official residence is Atlanta, Georgia; ocrupation, traffic manager of the Western & Atlantic Railroad.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. Since the first of January, 1877. I went into the service as freight clerk and filled a number of subordinate positions, as freight conductor, lost car agent, and as inspection agent here at Nashville, claim agent, car accountant, general freight agent, general freight and passenger agent, and traffic manager.

204 3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, Lagrange, and West Point, more than to Opelika.

The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta, to Newnan, Grantville, Hogansville, Lagrange, West Point, and Opelika were, in November, 1892, as follows:

[Rates in cents per 100 pounds.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	....	73
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	....	94
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	....	97
Lagrange, Ga	154	135	118	102	82	66	....	....	....	....	....	....	98
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	....	88
Opelika, Ala	114	98	86	73	60	49	36	48	46	39	58	68	73

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, Lagrange, and West Point, so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. The application of the Opelika rates to Atlanta and West Point stations mentioned in your question, I do not think would have the effect of increasing the movement of traffic to any appreciable extent. I am led to believe by experience and observation that whatever increased business should move would not make up for the loss of revenue which the reduction would bring. The merchants and consumers at each of the points mentioned are guided by the law of supply and demand, and a general reduction of the plane of rates would not be attended by a corresponding increase of traffic.

4. Q. State what transportation lines actually and actively competed in 1892, and now compete, for the transportation of the above-mentioned classes of freight from New York, Philadelphia, etc., to Opelika, Alabama?

A. The Clyde line.
205 The Mallory Line,
The Old Dominion Steamship Company,
The Ocean Steamship Company,
The Merchants' & Miners' Transportation Company,
The Bay Line.
Those are the water lines.
The rail lines are:
The Seaboard Air Line,
The Norfolk & Western Railroad,
The Atlantic Coast Line,
The Richmond & Danville Division of the Southern Railway,
The Pennsylvania Railroad,
The Baltimore & Ohio Railroad,
The Cumberland Valley Railroad,
The Philadelphia & Reading Railroad,
The South Carolina Railroad (now termed the South Carolina & Georgia),
The East Tennessee, Virginia & Georgia Division of the Southern Railway,
The Central Railroad of Georgia,
The Savannah, Americus & Montgomery Railroad,
The Atlanta & West Point Railroad, and
The Western Railway of Alabama.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from cities other than New York and Philadelphia.

A. The following transportation lines actually and actively competed in 1892 and now compete for the transportation of freight in classes 1 to H, inclusive, to Opelika from cities other than New York and Philadelphia:
The Louisville & Nashville Railroad,
The Nashville, Chattanooga & St. Louis Railway,
The Cincinnati, New Orleans & Texas Pacific Railway,
The Louisville Southern Railroad,
The Ohio Valley Railroad,
The Alabama Great Southern Railroad,
The Newport News and Mississippi Valley Company,
The Illinois Central Railroad Company,
The Mobile & Ohio Railroad,
The Memphis & Charleston Railroad,
The Kansas City, Memphis & Birmingham Railroad,
The Yazoo & Mississippi Valley Railroad,
The Georgia Pacific Division of the Southern Railway,
The New Orleans & Northeastern Railroad,
206 The Macon & Birmingham Railroad,
The Western Railway of Alabama, and
The Central of Georgia Railway.

6. Q. State whether the rates on the above-mentioned classes of freight from Philadelphia, New York, etc., via Charleston, Augusta, and Atlanta to Opelika are controlled to any, and if so to what, extent by competition.

A. The rates of freights on classes 1 to H, inclusive, are controlled by competition from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Opelika. The extent is considerable; it is the competition of carriers, markets, and products.

7. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and West Point are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates via the routes mentioned just and reasonable. They are made on the lowest existing combination. The through rates to Atlanta and Opelika are controlled by the competition of carriers, all rail and rail and water, and the competition of products and the markets are the productions of numerous considerations, circumstances, and conditions. The figures are reasonable and just. The proportions are prescribed by the Georgia railroad commission. They were constructed with regard to varied influences, and in our opinion are just and reasonable.

8. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. A competition between carriers by either rail or water substantially affects the circumstances and conditions under which the transportation of freight is conducted.

9. Q. State whether or not there is any such competition at Newnan, Grantville, Hogansville, Lagrange, and West Point as affects rates like the competition which exists at Opelika.

A. There is no such competition existing at Newnan, Grantville, Hogansville, Lagrange, and West Point to affect the rates like the competition which exists at Opelika.

10. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this,
207 your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I know nothing else material to the issue.

Cross-examination by Mr. SHAVER:

1. Q. Were not the rates in 1892 from New York and other Eastern cities to Atlanta and Opelika the same?

A. I believe they were.

2. Q. If the rates to the intermediate points between Atlanta and Opelika, Newnan, Grantville, Hogansville, Lagrange, and West Point were reduced so as to make them not higher than the Atlanta and Opelika rates, would not the tendency of such reductions be to benefit the merchants at those intermediate points?

A. I do not know that there would be any appreciable benefit.

3. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. If the conditions surrounding each of those points are exactly the

same, I should say that such preferences would hurt the one and favor the other if the conditions were exactly the same.

4. Q. Would not rates which benefit the merchants at a locality also, indirectly at least, benefit the population of that locality generally?

A. Well, that would not always follow. It might help the merchants a little, but being distributed about over so many items, to such a minute degree, it would probably not benefit the general public at all.

5. Q. Does not the prosperity of the road depend more upon the prosperity of the local stations on its entire line than on that of the few widely separated trade centers or competitive points?

A. I do not know that I could say that it would. Take the Western & Atlantic Road, for instance. We have during my twenty years of service on it, endeavored by all means in our power to build up the interests of the local stations as far as we consistently could, and in spite of all the nursing we could do, the proportion of the business to and from the local stations on the Western & Atlantic Railroad is very small as compared with that to Atlanta. You would be surprised, I think, to see how small it is.

208 6. Q. The rate from New York and Philadelphia on first-class goods to Lagrange is $1.54 per hundred pounds, while for the longer haul through Lagrange to Opelika it is only $1.14, making a difference of forty cents in favor of Opelika. Is that not a material difference in the rates?

A. That is quite a considerable difference. I do not know that it affects the power of either one of those cities in its ability to interfere with the proper trade of the other, considering the distance they are apart, and the fact that the competition at Opelika as a semidistributing point against the other point named, which simply distributes wagon trade, you may say, around it. If it were increased ten cents higher or reduced twenty cents or thirty cents lower, or forty cents lower, I do not suppose it would enable the local station to sell more plows or more hats than the people want or need anyhow.

7. Q. When goods are cheaper, is there not a greater consumption of them even by the same population than when they are higher?

A. Not always.

8. Q. When the price of goods is lower, does it not bring them within the reach of more people than when the price is higher?

A. To a limited degree. There are some classes of freight, though, I do not know that the people would take any more of them, no matter what the price is. For instance, I do not think I would buy more than one hat if the price was brought down from a dollar to ten cents. I just need one hat. That will do me.

9. Q. Do not rates affect and enter into the price of goods?

A. Well, to some extent it does, and to some extent it has no appreciable effect whatever.

10. Q. Can not all the lines which you name in your direct examination as running and competing for the business from New York and other Eastern cities to Opelika, also be formed to Newnan, Grantville, Hogansville, Lagrange, and West Point by combinations with either the Atlanta & West Point or the Western Railway of Alabama as terminal carriers?

A. If the terminal carriers named considered that they could afford it and consented for the other lines to do it, why, that could be done.

11. Q. Is not traffic transported from New York and other Northeastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point under through rates?

A. Yes, sir; I should say that whatever rates go over more than one road might be called through rates.

209 12. Q. The rates to those points involved in this case are through rates, are they not?

A. Under that kind of a definition, they are.

13. Q. You have stated that the rates from New York and Philadelphia to Newnan, Grantville, Hogansville, Lagrange, and West Point were, in your opinion, reasonable in and of themselves, I believe?

A. Yes, sir.

14. Q. Are the materially lower rates from New York and Philadelphia for the longer haul through those intermediate points to Opelika also, in your opinion, just and reasonable in and of themselves?

A. Considering the circumstances under which they are made, I should say those rates are just and reasonable.

15. Q. Would higher rates be charged from New York, Philadelphia, etc., to Opelika but for competition?

A. They certainly would.

16. Q. Is not a rate, in your opinion, under which traffic will move and which is not so high as to divert the traffic to other roads or lines, a reasonable rate?

A. I should think that was a reasonable rate in general.

17. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of service and carriage?

A. I should say not. If carried for less than cost, it would be unreasonably low.

18. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or expense of the service of carriage?

A. Well, it is very hard to determine regarding each particular shipment; probably it is impossible to determine regarding each particular shipment, whether it, considered by itself, is remunerative or not. There are so many conditions attending the running of trains and so many cars that an engine can carry, and things of that kind, that I do not see how we can lay down a general rule that would cover the case.

19. Q. Is not the expense of the service of carriage an element to be considered in determining whether a rate or set of rates is reasonable?

A. In general, yes.

20. Q. Does not the cost or expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. Well, I should say that is a factor.

210 21. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Necessarily so, other things being equal.

22. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. As a general proposition, yes.

23. Q. Other things being equal, is not the wear and tear on locomotives, cars, tracks, road bed, etc., greater the greater the length of the haul?

A. Yes, sir; the more miles to be traversed the more the wear and tear on the tracks and things of that kind, as a general proposition.

24. Q. Other things being equal, is not the cost of keeping the road in repair, or in good condition, greater the length of the road?

A. All other things being equal, I should say so.

25. Q. Other things being equal, does it not require more locomotives and cars and crews for the running of trains on a long road than on a short one?

A. That would vary with the length of the road quite materially.

26. Q. Other things being equal, does not distance add to the cost of building a road and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. The character of the country being the same, whether a plain country or mountainous, I should say so.

27. Q. How long have you been engaged in the railroad business east of the Mississippi River and south of the Virginias and the Ohio River?

A. Something over twenty years.

28. Q. Has the greater charge for the shorter than the longer hauls, over the same line, in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer distance points?

A. I do not know that it has, sir, of my own observation.

29. Q. Are not the rates from New York and other Eastern cities to Newnan, Hogansville, Lagrange and West Point made up by combining the rates through to Atlanta or Opelika with the local rates on from Atlanta or back from Opelika, as the case may be, to those intermediate points?

A. That is my understanding of the way they make those rates.

211 30. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir.

NASHVILLE, TENNESSEE, *July 16, 1897.*

R. E. LUTZ, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. R. E. Lutz; residence, Montgomery, Alabama; age, 46; freight-traffic manager of the Atlanta and West Point Railroad, and the Western Railway of Alabama.

2. Q. How long have you been engaged in the railroad transportation business and in what capacities?

A. In transportation and traffic about twenty-eight years. I first started out as telegraph operator, then as local agent, then as train

dispatcher, then as contracting freight agent, then as chief clerk in the general freight office, and then traffic manager.

3. Q. State how the rates charged by the Atlanta & West Point Railroad and the Western Railway of Alabama from Atlanta to Newnan, Grantville, Hogansville, Lagrange, and West Point, Georgia, compare with the rates authorized and approved by the Georgia Railroad commission as reasonable and just for similar distances in the State of Georgia.

A. I will answer that and state that the rates charged by the Atlanta & West Point Railroad from Atlanta to Newnan, Grantville, Hogansville, Lagrange, and West Point are exactly and identically the rates that this company is directed and ordered to charge by the Georgia railroad commission and are practically the same as charged for similar distances by other roads in the State of Georgia.

4. Q. File as Exhibit No. 2 to this case the following pages of the 23rd annual report of the railroad commission of Georgia, from October 15th, 1894, to October 15th, 1895; namely, pages 64, 65, 66, 67, 99, 126, 127, 128, 129, and 130.

A. I file the same herewith.

(The pages of the report referred to are hereto attached and marked Exhibit No. 3.)

5. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of the like kinds of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, Lagrange, and West Point more than to Opelika?

212 [A.] The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, West Point, and Opelika were, in November, 1892, as follows:

[Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	78	....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	94	....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	97	....
Lagrange, Ga	154	135	118	102	82	66	....	....	....	....	....	99	....
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	88	....
Opelika, Ala	114	98	86	73	60	49	36	48	40	39	58	66	70

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, Lagrange, and West Point so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. In my opinion, the reductions in rates to the Atlanta & West Point Railroad stations based on the Opelika rate would not materially increase the business at the intermediate local stations on the Atlanta & West Point Railroad, for the simple reason that the amounts of the shipments that are made are based on the first six classes, which are principally dry goods, boots and shoes, hats, millinery, and notions. Assuming that you apply the regular published tariff rates to those stations, the additional cost perhaps on a suit of clothes would be so very small that you could scarcely compute it. The same is true on a hat. Take a pair

of shoes, for instance; it would probably be a fraction of a cent; and any reduction in the rates would not, in my opinion, increase the business of those stations. It would simply have the effect of causing that much loss in revenue to the Atlanta & West Point Railroad.

6. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight from New York, Philadelphia, etc., to Opelika, Alabama.

213 A. The allrail lines via Cincinnati in connection with the Louisville & Nashville Railroad, is—

The Cincinnati, New Orleans & Texas Pacific Railway via Hagerstown, Alexandria, and Richmond in connection with

The Norfolk & Western Railroad,

The Southern Railway,

The Seaboard Air Line, and

The Atlantic Coast Line, as well as the rail and water lines plying by the ports of Norfolk, Charleston, Brunswick, and Savannah, all are active competitors for the business from Eastern cities to Opelika.

The Plant System,

The South Carolina & Georgia Railroad,

The Georgia Railroad,

The Charleston & Western Carolina Railroad,

compete actively for the business handled through Charleston.

The Southern Railway and Plant Systems through Brunswick, and the Central of Georgia and Plant Systems and the Georgia & Alabama Railroad through Savannah.

7. Q. What is the distance from New York to Opelika, Ala., via ocean to Charleston, and thence via the South Carolina Railway, the Georgia Railroad, the Atlanta & West Point Railroad, and the Western Railroad of Alabama?

A. The distance from New York to Opelika via steamship to Charleston, Augusta, and Atlanta is 668 miles. The distance from New York to Opelika via Charleston, Augusta, Macon, and the Central of Georgia Railway is 642 miles.

The distance from New York to Opelika via ocean to Savannah, and the Central of Georgia Railway, is 570 miles.

The distance from New York to Opelika via ocean to Savannah and thence via the Georgia & Alabama Railway, Americus, and the Central of Georgia Railway is 542 miles.

The distance from New York to Opelika via ocean to Brunswick and via the Brunswick & Western Railroad, Columbus Southern (now part of the Georgia & Alabama Railroad), and the Central of Georgia Railway is 548 miles.

8. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from cities other than New York and Philadelphia.

A. From the Ohio and Mississippi Rivers:

The Cincinnati, New Orleans & Texas Pacific Railway,

The Louisville & Nashville Railroad,

The Louisville, Evansville & St. Louis Railroad,

214 The Ohio Valley Railroad,

The Mobile & Ohio Railroad,
The Nashville, Chattanooga, & St. Louis Railway,
The Missouri Pacific Railway,
The St. Louis, Alton & Terre Haute Railroad,
The Kansas City, Memphis & Birmingham Railroad,
The Southern Railway,
The New Orleans & Northeastern Railroad,
The Alabama & Vicksburg Railroad, and their connections, actively compete now and did compete in 1892 for Opelika traffic, reaching that point over the Western Railway of Alabama, or the Central of Georgia, or both.

9. Q. State whether the rates on the above-mentioned classes of freight from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Opelika, are controlled to any, and if so to what, extent by competition.

A. The rates from New York, Philadelphia, etc.. via Charleston, Augusta, and Atlanta, to Opelika are materially controlled, and, in fact, determined by the competition that exists. The Central of Georgia Railway and the ocean steamship companies being under one management and control, leading direct from the Eastern ports to Opelika, control the making of rates to that point, and but for this competition to Opelika the rates to that point would be made on the combination to the other local stations and would be higher than the rates to any point on the Atlanta & Westpoint Railroad.

10. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and Westpoint are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. I consider the aforementioned rate from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and Westpoint to be just and reasonable, as the rates per ton per mile do not indicate them to be unreasonable in themselves, and inasmuch as they are not higher than the rates from other points of distribution to stations on other roads under similar circumstances and conditions.

11. Q. State what were the proportions received by the different carriers out of the rates in effect in November, 1892, from New York, Philadelphia, etc., via water to Charleston, thence via Augusta and Atlanta to Opelika.

A. The proportions were as follows:

215 [Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Insurance	11	8	6	4	3	2	2	2	2	2	2	2	4
Steamship	30.5	26.2	23	19.4	15.5	12.2	9	12.9	10.3	9.9	16.1	19.4	19.9
W. & T	8	8	8	8	8	8	5	5	5	5	5	5	10
S. C. & G	18.3	15.8	13.3	11.7	9.3	7.4	5.4	7.7	6.2	6	9.7	11.7	12
Aug. Transfer	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	3
Ga. Ry	22.8	19.6	17.6	14.5	11.6	9.1	6.7	9.6	7.6	7.4	12	14.5	14.8
A. & W. P	11.4	9.9	8.7	7.3	5.8	4.6	3.4	4.9	3.9	3.8	6.1	7.3	7.5
Western Ry	10.5	9	7.9	6.6	5.3	4.2	3	4.4	3.5	3.4	5.6	6.6	6.8
Total	114	98	86	73	60	49	36	48	40	39	58	68	78

12. Q. State what proportion was received by the Atlanta & West Point Railroad and the Western Railroad of Alabama amounted to in cents per hundred pounds.

A.

[Cents per ton per mile.]

Classes.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
2.6	2.3	2	1.7	1.3	1.1	0.7	1.1	0.9	0.9	1.4	1.7	1.7

216 13. Q. Did the proportions which were received by the said Atlanta & West Point Railroad and the Western Railway of Alabama during 1892 on each of the different classes of freight shipped from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta, destined to Opelika, exceed the additional cost to said roads of the movement of said freight?

A. The proportions accruing to the Atlanta & West Point Railroad and the Western Railway of Alabama in 1892 on the different classes of freight from New York, Philadelphia, etc., to Opelika, exceed slightly the cost of movement of said freight. The fact that the general expenses of the road would be the same, that the same number of trains would be run whether this Opelika business were handled or not, makes the carrying of such freight remunerative, while, as a matter of fact, if all business carried was at the same rate, the revenue derived would be inadequate to meet the expenses incident to the safe and efficient service that railroads are now required to give.

14. Q. Were the Clyde Steamship Company, the South Carolina Railway Company, the Georgia Railroad & Banking Company, the Louisville & Nashville Railroad Company, the Central Railroad & Banking Company of Georgia, the Atlanta & West Point Railroad, and the Western Railroad of Alabama under any common control or management in 1892 or are they now under any such common control or management?

A. To the best of my knowledge and belief the Clyde Steamship Company, the South Carolina Railway Company, the Georgia Railroad & Banking Company, the Central Railroad & Banking Company of Georgia, the Atlanta & West Point Railroad, and the Western Railway of Alabama were not under any common control or management in 1892, nor are they now under any common control or management.

15. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers has always been recognized as a factor in determining rates, its importance varying with the degree and nature of the competition. The simple fact that two roads pass through the same point does not necessarily make rates to that point different from what they would be if situated only on one line. This is particularly the case where two roads are really not in actual competition, as the termini drawing business from different sections. Water competition is an important factor in the adjustment of rates and invariably has the
217 effect of making them low on account of the exceeding cheapness by which water lines can carry freight.

16. Q. State whether there is any such competition at Newnan, Grantville, Hogansville, Lagrange, or Westpoint as affects the rates like the competition which exists at Opelika.

A. Such competition as exists at Newnan and Lagrange, Georgia, is entirely different from that which exists at Opelika; while at Grantville, Hogansville and Westpoint there was no competition whatever.

17. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I think my answers fully cover the case. I do not know of anything I could add that would help the case.

Cross-examination by Mr. SHAVER:

1. Q. I notice that you read your answers to the direct interrogatories from a manuscript before you. How long ago did you prepare your answers?

A. Probably about a month ago.

2. Q. You had been furnished with copies of the interrogatives, had you not?

A. Yes, sir.

3. Q. Does the Georgia railroad commission undertake to fix through rates on interstate commerce, or any proportion of such through rates?

A. On interstate commerce, no, sir.

4. Q. Are not the rates from Atlanta to Newnan, Grantville, Hogansville, Lagrange, and Westpoint what are known as local rates?

A. Yes, sir.

5. Q. You stated in your answer to the direct interrogatories that the reduction in the rates to Newnan, Grantville, Hogansville, Lagrange, and Westpoint, so as to make the rates to those points not higher than the rates to Opelika, would not, in your opinion, increase the business to those points.

A. I do not think they would.

6. Q. Do you mean by that, immediately increase the business?

218 A. It would not do it immediately. It would not increase the business immediately. The business in general would not be increased by the reduction in the rates.

7. Q. Would it not be increased in the course of time?

A. It is just how you consider time. If you take twenty, thirty, or forty years, the business may increase as the population of the county increases.

8. Q. I am referring to increase as attributable to the reduction in the rates.

A. No, sir; I do not think the reduction in the rates would increase the business at those points. That is my candid opinion.

9. Q. Now, the rate on first-class goods from New York and Philadelphia to Lagrange is $1.54 per hundred; to Opelika, $1.14; making a difference in favor of Opelika of forty cents per hundred pounds. Is not that a material difference in rates?

A. Yes, sir; that is a material difference in rates, putting it that way;

it is just the difference between $1.14 and the rates you named to Lagrange, $1.54.

10. Q. Supposing that the merchants at Opelika sell goods at Westpoint and Lagrange and in surrounding territory in competition with the local merchants at Westpoint and Lagrange, would not a reduction in rates to Westpoint and Lagrange, which would make them not higher than the Opelika rates, be of great benefit to the merchants at Lagrange and Westpoint in their competition with the Opelika merchants?

A. If that was true, that the Opelika merchants did not compete by reason of the lower rates they have on business from the East, with the merchants at Lagrange, Hogansville, and Grantville, of course, a lower rate to those points would naturally benefit the merchants at those points; but as a matter of fact the rates being to Westpoint almost identically made on the combination to Opelika, plus the full local of the Western Railway of Alabama, practically prohibits the Opelika merchants from going into that market and competing against the Westpoint merchants.

11. Q. My question was based on the supposition that they did not compete.

A. They possibly may compete, but it is on equal terms, because the rates are made identically the same—the total rates are identically the same.

12. Q. Under the existing system of rates, then, the Opelika merchant can ship goods through from New York, through the intermediate points to Opelika, and then back to these points in the first instance?

219 A. Only one, and that is West Point. On the first six classes, the business from Eastern cities, the rates to West Point are made by taking the through rate to Opelika plus the full local rates of the Western Railway from Opelika to West Point.

Now, to La Grange, Hogansville, Grantville the rates are made differently. The rates are made on Atlanta, which are lower than are made on Opelika, plus the local of the two roads to points mentioned.

13. Q. To what points?

A. To all points with the exception of West Point, and to West Point only the first six classes are made on the Opelika combination.

14. Q. The rate, then, from Newnan, Grantville, Hogansville, and La Grange are the through rate to Atlanta plus the local rate from Atlanta on to those points—I mean with the exception of Newnan?

A. With the exception of Newnan the rates are made with the full locals of the Atlanta and West Point road.

15. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a reduction of rates to a given point towards improving and increasing the business at that point?

A. I cannot say that it will. In some localities, some business, possibly that might be true. In other words, it would not be true in all cases. It simply means this: that if you reduce the cost of a barrel of flour or a pound of sugar, the consumer, in all probability, might get the benefit of a proportional decrease in the freight. It would not increase the consumption, in my opinion, the least bit.

16. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction of rates to a given point towards improving and increasing the business at that point? Your answer is the same to this question?

A. Yes, sir.

17. Q. As a general rule, and in the absence of exceptional conditions, is not the natural tendency of a material reduction of rates to a given point, towards the encouragement of investment of capital at such point and the increase of its population?

A. Not in all cases. It might be in exceptional cases. As a rule, it would not.

220 18. Q. Would not the natural effect of unfavorable rates to or discrimination in rates against a given point injure the mercantile and other business interests of such point, and retard or prevent its growth or prosperity?

A. That would depend a great deal on what you might term "discrimination." What the discrimination might be. It would depend a good deal on that. In most cases it would not make any difference, the difference in the rates being so small that it would make no material difference.

19. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of these localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir; I naturally think that would be the case. I think that would be the result.

20. Q. Do not rates enter into and affect the price of goods?

A. To a certain extent, yes; just as I stated a while ago. You might, for instance, take a rate to a given point, where—say it is from New York $1.56; to another place it is $1.14. Those rates apply on such goods ashats, dry goods, and dress goods. It would be very difficult indeed to compute the additional cost per yard on dress goods with that difference in freight per hundred pounds. It would be so small that you could hardly take it into consideration. The same thing would be true as to the additional cost of a hat or a pair of shoes or a pair of socks or a necktie.

21. Q. Does not a merchant, in fixing the price of his goods, have to include in that price the original cost of the goods to him and also the cost of transportation?

A. Yes, sir; he would do that if the goods are sold to him f. o. b. upon shipment. If so delivered at a certain price, I suppose the shipper in making that price would add the freight in. He would naturally do that. But as a general rule I suppose the freight has to be added to the original cost of the goods.

22. Q. Do not lower prices bring goods within the reach of the greater number of people and thus tend to increase the consumption of goods?

A. That might be true in some cases. In other cases I do not know that it would.

23. Q. In your answer to the direct interrogatories you named a number of lines from New and Eastern cities and also from

221 Ohio and Mississippi river points which could be formed to Opelika. Cannot those lines also be formed to Newnan, Grantville, Hogansville, La Grange, and West Point by combination with either the Western Railway of Alabama or the Atlanta and West Point Railroad as the terminal carriers of such lines?

A. Yes, sir; I should think so. That is, the lines mentioned. They, in connection with other lines, could form the same through lines.

24. Q. Are not the rates by all the all-rail lines from New York and other Northeastern cities to Opelika the same?

A. Yes, sir.

25. Q. Are not the rates by the rail and by the water lines from New York and other Northeastern cities to Opelika the same?

A. Yes, sir.

26. Q. Is it not a rule that a short line between two given points fixes the rate?

A. Yes, sir.

27. Q. Is not traffic transported from New York and other Eastern cities over the line involved in this case, namely, the line from New York to Charleston by the Clyde Steamship Company from Charleston to Augusta, by the South Carolina Railroad, from Augusta to Atlanta by the Georgia Railroad, and from Atlanta to Newnan, Grantville, Hogansville, La Grange, and West Point by the Atlanta & West Point Railroad, under through rates?

A. Yes, sir; through rates are made just as I said before, by taking the rates to Atlanta or Opelika, as the case may be, and adding the local rate. That is done as matter of convenience to the shippers.

28. Q. Is such traffic not also transported over that line under through bills of lading, issued by the initial carrier at New York and other Northeastern cities?

A. Yes, sir.

29. Q. You stated in your direct examination that the rates over the line involved in this case from New York and other Northeastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point were just and reasonable. Is that your opinion also as to the rate from New York and other Northeastern cities for the longer haul, through those intermediate points to Opelika?

A. Yes, sir.

30. Q. You stated that the rate to Opelika pays something in excess of the additional cost of handling the freight over the proportion received by the Atlanta and West Point road?

A. Yes, sir.

222 31. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I would not consider it a reasonable rate if it did not yield the carrier sufficient revenue over and above the cost of transportation.

32. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost of the expense of the service of carriage?

A. That would be the only means we would have of knowing or trying to approximate as to about what the cost—that is trying to find out the cost as near as you can of carrying a ton of freight a mile or anything in excess of that—quite a number of things you have to take into consideration in saying whether that would be a profitable rate or not. For instance, you might at certain seasons of the year haul certain freight on certain trains that had to move anyhow, whether they had one car or

whether they had twenty. In that case you could probably move a car of freight or a ton of freight at much less expense than you could had you to provide special service, or if it were at other times of the year. There are times when we accept certain freights that we would not accept at other times. I will take the local freight, for instance, that will run between Atlanta and West Point. That train has got to run; we have got to pay the engineer and we have got to pay the crew; and by adding on probably one or two more cars, or something of that kind, it probably would not add to the cost of the train but very little more. Now, if we had to go to work to perform a certain service for a certain class of low freight we often could not afford to haul it; we would not haul it; we turn down lots of it.

33. Q. The transportation of the hindmost car would cost the road as much for transporting it the same distance as it cost for the foremost car?

A. That would not always be the case for the very reason that the foremost car would not be switching back and forth as much, being attached to the engine, and the wear and tear of that car, and the cost of repairs to that car, and the accidents to that car would not be as great as the hindmost car that was constantly being switched from the point of shipment to the final destination. Going into the switch so often might cause a draw frame to be pulled out or a brake being broken, or something of that kind, and even if no accident happened to the car there is obliged to be more wear and tear on that car.

223 34. Q. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

35. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

36. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

37. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, and roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

38. Q. Other things being equal, is not the cost of keeping the road in repair or good condition greater the greater the length of the road?

A. Yes, sir.

39. Q. Other things being equal, does it not require more locomotives and cars and crews for running a train on a long road than on a short one?

A. Yes, sir.

40. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital, greater the greater the length of the road?

A. Yes, sir.

41. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on long through hauls?

A. Yes, sir.

42. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Nearly 25 years.

43. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. No, sir.

NASHVILLE, TENNESSEE, *July 19, 1897.*

GEORGE R. KNOX, a witness on behalf of the defendants, having been duly sworn, testified as follows:

224 Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George R. Knox; 52; Nashville, Tenn.; general freight agent, Nashville, Chattanooga and St. Louis Railway.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. I was in the local freight office and in the accounting department for some time before entering the general freight office of the Nashville, Chattanooga and St. Louis Railway. I have been in the general freight office since March, 1867, and as subordinate clerk, chief clerk, assistant general freight agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, Lagrange, and Westpoint more than to Opelika. The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, Westpoint, and Opelika were in November, 1892, as follows:

[Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	78	....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	94	....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	97	....
Lagrange, Ga	154	135	118	102	82	66	....	....	....	....	....	99	....
Westpoint, Ga	142	124	110	93	77	62	....	....	....	....	....	88	....
Opelika, Ala	114	98	86	73	60	49	36	48	40	39	58	68	78

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, Lagrange, and Westpoint, so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

225 A. In my opinion, if the rates to Newnan, Grantville, Hogansville, Lagrange, and Westpoint were reduced to the same as to Opelika, it would simply result in a loss of revenue to the extent of such

reduction of the freight hauled for the reason that such reduction would not materially increase the traffic to these points, they being what might be termed consumptive rather than jobbing or distributing points.

4. Q. State what transportation lines actually and actively competed in 1892, and now compete, for the transportation of the above-mentioned class of freight from New York, Philadelphia, etc., to Opelika, Ala.

A. These lines are as follows:

Route No. 1: The Ocean Steamship Company to Savannah, 250 miles; the Central of Georgia Railway to Atlanta, 294 miles; Atlanta & West Point Railroad and Western Railway of Alabama to Opelika.

Route No. 2: The Ocean Steamship Company to Savannah, 250 miles; the Central of Georgia Railway to Opelika.

Route No. 3: The Clyde Steamship Company to Charleston, 250 miles; the South Carolina & Georgia Railroad to Augusta, 138 miles; the Georgia Railroad to Atlanta, 171 miles; the Atlanta & West Point Railroad and the Western of Alabama Railway to Opelika.

Route No. 4: The Old Dominion Steamship Company to Norfolk, 160 miles; the Norfolk & Western Railway to Bristol, 408 miles; the Southern Railway to Chattanooga, 242 miles; the Western & Atlanta Railroad or Southern Railway to Atlanta, 138 miles; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 5: The Old Dominion Steamship Company to Portsmouth, 160 miles; the Seaboard Air Line to Atlanta, 595 miles; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 6: The Old Dominion Steamship Company to Nor-
226 folk, 160 miles; the Southern Railway to Atlanta, 595 miles; the Atlanta & West Point Railroad or the Western Railway of Alabama to Opelika.

Route No. 7: The Old Dominion Steamship Company to Pinners Point, 160 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railway to Augusta, 57 miles; the Georgia Railroad to Atlanta, 171 miles; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 8: The Old Dominion Steamship Company to Pinners Point, 160 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railway to Augusta, 57 miles; the Georgia Railroad to Macon; the Central of Georgia Railway to Opelika.

Route No. 9: The Lehigh Valley Railroad to Allentown, 93 miles; the Philadelphia & Reading Railroad to Ship'ensburg, 131 miles; the Western Maryland Railroad to Hagerstown, 46 miles; the Norfolk & Western Railway to Bristol, 390 miles; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 10: The Central Railroad of New Jersey to Allentown, 90 miles; the Philadelphia & Reading Railroad to Shippensburg, 131 miles; the Western Maryland Railroad to Hagerstown, 46 miles; the Norfolk & Western Railway to Bristol, 390 miles; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 11: The Pennsylvania Railroad to Harrisburg, 195 miles; the Cumberland Valley Railroad to Hagerstown, 74 miles; the Norfolk

& Western Railway to Bristol, 390 miles; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 12: The Pennsylvania Railroad to Alexandria, 237 miles; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

227 Route No. 13. The Pennsylvania Railroad to Delmar, 215 miles; the New York, Philadelphia & Norfolk Railroad to Pinners Point, 131 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railroad to Augusta, 57 miles; the Georgia Railroad to Atlanta, 171 miles; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 14. The Pennsylvania Railroad to Delmar, 215 miles; the New York, Philadelphia & Norfolk Railroad to Pinners Point, 131 miles; the Atlantic Coast Line to Denmark, 390 miles; the South Carolina & Georgia Railroad to Macon, 57 miles; the Central of Georgia Railway to Opelika.

Route No. 15. The Central Railroad of New Jersey to Bound Creek, 31 miles; the Philadelphia & Reading Railroad to Philadelphia, 60 miles; the Baltimore & Ohio Railroad to Alexandria, 144 miles; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 16. The Pennsylvania Railroad to Delmar, 215 miles; the New York, Philadelphia & Norfolk Railroad to Portsmouth, 131 miles; the Seaboard Air Line to Atlanta, 595 miles; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 17. The Mallory Steamship Line to Brunswick; the Southern Railway to Atlanta; the Atlanta & West Point Railroad and the Western Railway of Alabama to Opelika.

Route No. 18. The Mallory Steamship Line to Brunswick; the Southern Railway to Macon, and the Central of Georgia Railway to Opelika.

Route No. 19. The Mallory Steamship Line to Brunswick; the Plant System to Albany; the Georgia & Alabama Railroad to Columbus; the Central of Georgia Railway to Opelika.

228 Route No. 20. The Mallory Steamship Line to Brunswick; the Plant System to Albany; the Central of Georgia Railway to Opelika.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight to Opelika from cities other than New York and Philadelphia.

A. All lines west of Pittsburg leading South compete for the t'ansportation of freight to Opelika, Alabama.

6. Q. State whether the rates on the above-mentioned classes of freight from New York, Philadelphia, &c., via Charleston, Augusta, and Atlanta to Opelika, are controlled to any extent, and if so, to what extent, by competition.

A. Yes, sir; the rates from New York, Philadelphia, &c., to Opelika are controlled by competition, not only among the lines leading directly from the Eastern cities, but also by competition from Cincinnati and Ohio River points, and also by rates made from both Eastern and Western cities to Atlanta, Macon, &c.

7. Q. State whether or not, in your opinion, the above-mentioned class rates from New York, Philadelphia, &c., via Charleston, Augusta, and Atlanta, to Newnan, Grantville, Hogansville, Lagrange, and West Point are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. Yes, sir; I consider the rates from New York, Philadelphia, &c., via Charleston, Augusta, and Atlanta, to Newnan, Grantville, Hogansville, and West Point just and reasonable, for the reason that they do not allow the carriers excessive revenue for the service performed, and, furthermore, that they compare favorably with other rates for similar distances and services in that territory, and these points receive the benefit of the competition up to Atlanta and Opelika.

8. Q. State whether competition between carriers, whether by rail or water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Yes, sir; competition between carriers, whether by rail or by water, affects the circumstances under which transportation is conducted.

9. Q. Does it, or not, substantially affect it?

A. Yes, sir; substantially affects it.

229 10. Q. State whether or not there is any such competition at Newnan, Grantville, Hogansville, Lagrange, or West Point as affects rates like the competition which exists at Opelika.

A. I do not consider that the same competition exists at Newnan, Grantville, Hogansville, Lagrange, and West Point as at Opelika, but these points do have the benefit of competition as exists up to Opelika and Atlanta.

11. Q. State whether the number of tons carried one mile, or the number of tons carried of freight-earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile can either jointly or separately be used as a standard in railroad rate making.

A. No, sir; I do not consider the freight receipts per ton per mile or the estimated cost per ton per mile, or the number of tons carried one mile, or the estimated cost of carrying one ton one mile can be used as a standard for a basis in making rates, for the following reasons:

(a) The local freight of the road is handled under entirely different circumstances and conditions from through or competitive freight.

(b) On competitive freight, as a rule, the value of transportation is fixed by the surroundings.

(c) There are certain fixed charges and expenses which have to be made whether the business is light or heavy.

(d) The freight receipts per ton per mile may show heavy on account of the class or character of freight handled. Then, again, for the same reason they may show light on account of the low class of freight.

Again, the volume of business as well as the class of the business and how it averages up necessarily changes the rate per ton per mile as well as the cost of transportation.

12. Q. Does the Nashville, Chattanooga & St. Louis Railway and its connections compete for the transportation of the above-mentioned classes of freight to Opelika or not?

A. From the East?

13. Q. From the West or any point.

A. Yes, sir; from the West we do.

14. Q. Does said railway and its connections advertise for the transportation of that freight?

A. Yes, sir; just exactly as we do for other freight throughout the country from the entire West.

15. Q. Do they solicit the carriage of that class of freight?

230x A. Yes, sir.

16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties as issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters involved in this cause? If yea, set forth the same fully and at large in your answer.

A. I think these questions and answers have covered the ground quite fully.

Cross-examination by Mr. SHAVER:

1. Q. In the event the merchants at Opelika sell goods at West Point, Lagrange, and Hogansville, and in the territory adjacent, in competition with the local merchants at those points, would not a reduction in the rates from New York and other Northeastern cities to those intermediate points, so as to make their rates not higher than the Opelika rates, be of great benefit to the local merchants at those intermediate points in that competition?

A. If, in equalizing the rates to Newnan, Grantville, Hogansville, Lagrange, and West Point to Opelika and Atlanta, the rates to Opelika and Atlanta should be advanced the same as to the points mentioned, it would not reduce the rates to these intermediate points but would only advance the rates to the two terminal or competitive points. The merchants at Atlanta and Opelika, after having paid inbound the same rates as the rates paid direct to Newnan, West Point, and the other intermediate points, they would be practically excluded from competing with the dealers at those points, because they would have to pay, in addition, the same rates inbound as paid by those dealers and the additional rate outbound, and it would mainly benefit the dealers at Newnan, West Point, &c., by excluding dealers at Atlanta and Opelika from competing for that business.

2. Q. If the rates to intermediate points from New York, &c., were made not higher than the Opelika rate by the reduction of the rates to those intermediate points, would not the result be the same?

A. I think the result would be practically the same as explained in my last answer, that the dealers at these intermediate points would be benefited by excluding their competitors at Atlanta and Opelika.

231 3. Q. The rates to Atlanta and Opelika from New York and other Northeastern cities are the same, are they not?

A. I do not know. The Nashville, Chattanooga & St. Louis road does not compete for the business from New York either to Atlanta or Opelika, and I do not keep track of those rates very closely, and I do not know whether they are the same or not.

4. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Frequently it does not have that effect. If the rates on flour, corn,

hay, and hog products from the West to the Southeast were reduced one-half, I do not think it would have any material effect on the volume of traffic, nor do I think that if the rates on cotton from the Southeast to the seaboard or to Eastern cities were cut half in two that it would materially affect the volume of that traffic.

5. Q. Which is more beneficial to the business of a locality, high rates or low rates?

A. It depends altogether upon the conditions surrounding it. Low rates on agricultural products from the West have proven very injurious to Tennessee farmers. They would be benefited if those rates were made higher. In my opinion, the opening up of the many new Western lands and the low rates made from the very fertile low-priced fields of the West and Northwest have materially and permanently lowered the values of the farm lands through Tennessee.

6. Q. As a general rule, in the absence of exceptional conditions, which are more beneficial to a locality, low rates or high rates?

A. Sometimes one and sometimes the other. The manufacturer likes to have low rates with which to get out with his products. He likes to have high rates into his territory, from other territory into his section, on like character of goods.

7. Q. Do not rates of transportation enter into and affect the prices of goods sold by merchants?

A. On some classes the rates of freight, no doubt, does have a controlling influence on the price. On other classes it has very little to do with the price. Take, for instance, dry goods from New York to any of the Southeastern markets, or boots and shoes; if the rate of freight
232 was cut half in two the probability is the consumer would pay the same price for the dry goods or the boots and shoes that they do now.

8. Q. Would not the merchants be benefited.

A. The merchants' profit would be somewhat increased.

9. Q. Does not the general prosperity of the locality depend largely upon the prosperity of its merchants and business men?

A. It does; and the manufacturers, I would add, where it has them.

10. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. Yes, sir; a reduction in rates to a point will encourage the investment of capital at that point.

14. Q. I asked if that is not the natural tendency.

A. No, sir; frequently the reverse.

15. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. No general answer can be given. In each instance the other conditions and surroundings of the particular point in question would, no doubt, enter largely into the result. Low rates on the raw material for manufacturing purposes, to a given points, are beneficial. But, as heretofore explained, low rates on the manufactured product to the same point in competition with the local manufacturer are injurious.

13. Q .Injurious to the local manufacturers?

A. Yes, sir; injurious to the local manufacturers; and, as explained above on agricultural products, low rates from the West to Tennessee points have proved injurious to the Tennessee farmers while beneficial to the Tennessee consumers. So that low rates to any points, while benefiting some classes of population, must injure others, and whether or not the entire community is benefited by it depends upon the preponderance or the greater number of those who are benefited or those who are injured.

14. Q. Are not the consumers in all instances benefited by low rates on the articles which they consume?

A. They might be benefited in securing some of their supplies at slightly lower prices, although, as stated in the case of dry goods
233 and boots and shoes from the East, possibly the consumer might get no benefit, but the jobber or merchant might receive some; but if these consumers should be employés of the manufacturing establishments injured by these low rates to their point, the reduction in their wages might more than offset the less price in the articles which they consume.

15. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir.

16. Q. Are the rates from New York and other northeastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point, in your opinion, just and reasonable in and of themselves?

A. I think they are.

17. Q. Are the lower rates from New York and other northeastern cities for the longer hauls through those intermediate points to Opelika also just and reasonable in and of themselves?

A. I think so.

18. Q. Do those rates to Opelika yield the carriers revenue in excess of the cost of transportation?

A. They do.

19. Q. Would those rates to Opelika be made higher but for competition?

A. They would.

20. Q. Is a rate, in your opinion, reasonable which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I do not think it is.

21. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. That is one of the factors that enters into the cost, but only one.

22. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. It is.

23. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

234 24. Q. Other things being equal, is not the wear and tear on locomotives, cars, tracks, roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

25. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. It is.

26. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long haul than on a short one?

A. It does.

27. Q. Other things being equal, does not distance add to the cost of building the road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Where all things are equal that is true.

28. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on long through hauls?

A. It is.

29. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Continuously since December, 1865.

30. Q. Has the greater charge for the shorter than the longer haul over the same line, in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer-distance point?

A. Well, that word "competition" is a very broad one. Sometimes there is competition of products as well as competition of lines, competition of markets, and letting the word "competition" include all branches of the subject, then I would answer that it has never been made except to meet competition—letting the word "competition" cover all branches of the subject, that is, competition of markets, product with product, competition of line and line, and competition of rail with water.

31. Q. Is there competition to market without there being also competition in transportation?

A. Yes, sir.

32. Q. Well, name an instance.

A. We have right in our own line here two towns selling the same product, competing with each other, shipping over the same road, both being local points. For instance, there is a pipe foundry at South

235 Pittsburg and another at Bridgeport. Both are local to our line, and both of which compete strongly with each other in selling their pipe to the markets of the country.

33. Q. Is there any greater charge for the shorter than the longer haul?

A. No. In that case the charge is the same.

34. Q. I am referring to cases of a greater charge for the shorter haul. Is that greater charge ever made except in the case of competition in transportation, to your personal knowledge?

A. I can not for the moment call to mind such a case, though I am

quite sure there have been such cases. There is a case in point from Nashville to Hickman. There is only one line from Nashville to Hickman, and yet the rates to Hickman are less than to points this side of Hickman. There is only one line. That is competition of market with market. Nashville reaches Hickman, Kentucky, over the Western Division of our road; St. Louis reaches Hickman not only by rail, but also by the Mississippi River boats at low rates, so that Nashville would be unable to sell any goods in Hickman, and therefore we were forced to make low rates from Nashville to Hickman. They were made to meet the competition of St. Louis and other markets reaching Hickman by river. We do not make as low rates to the other points this side of Hickman, notwithstanding there is only one road between here and Hickman; no other line from here to Hickman. I never heard of freight going from Nashville to Hickman except over our road.

35. Q. Is that not a case of competition between your line to Hickman and the lines from St. Louis to Hickman?

A. It is what I call competition of market with market.

36. Q. Does it not also involve the competition between transportation lines from different markets?

A. Indirectly it does; yes; that is true. St. Louis has her low rates.

37. Q. Is not a rate under which traffic will move, and which is not so high as to divert the traffic to other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir; I think it is.

38. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other Northeastern cities to Nashville, would it be necessary for any one of those roads or lines to depart from this rule in order to retain its share of its traffic and prevent diversion of its traffic to the other roads or lines?

236 A. It would; that is, it would be necessary to depart from that rule.

39. Q. In the direct examination you named a number of lines which could be formed to Opelika. Can not all those lines be also formed to Westpoint, Lagrange, Hogansville, Grantville, and Newnan by combination with the Atlanta & Westpoint or the Western Railroad of Alabama as the terminal carriers?

A. They could.

40. Q. Are not Newnan and Lagrange situated on other roads besides the Atlanta & Westpoint road?

A. Yes, sir.

41. Q. State what other road Newnan is located on.

A. The Central Railway of Georgia.

42. Q. What other roads is Lagrange located on?

A. On the Macon & Birmingham.

43. Q. Is not traffic transported from New York and other Northeastern cities to Newnan, Grantville, Hogansville, Lagrange, and Westpoint under through bills of lading issued by the initial carrier at New York and other Northeastern cities?

A. I think so.

44. Q. Is not such traffic transported under through rates to those intermediate points?

A. Yes, sir; that is my understanding.

45. Q. You stated that the Nashville, Chattanooga & St. Louis road competes for the solicits business from the West to Opelika?

A. Yes, sir.

46. Q. Does not your road also solicit and compete for business from the West to points intermediate between Atlanta and Opelika?

A. It does.

47. Q. When traffic is transported from the West over lines of which the Nashville, Chattanooga & St. Louis road forms a part to Newnan, Grantville, Hogansville, Lagrange, and Westpoint, is it not transported under through bills of lading and under through rates?

A. Yes, sir.

48. Q. Are not rates by all the all-rail lines from New York and other Northeastern cities to Opelika the same?

A. They are supposed to be.

49. Q. Are not they the same rates which were originally established by the Southern Railway & Steamship Association?

237 A. I think they were the rates when that association dissolved, but a good deal less than the rates first established by that association.

50. Q. Were not the rates established by the association the rates in force in 1892 to Opelika.

A. I think so.

51. Q. You stated in your direct examination that the average receipts per ton per mile on traffic in general and estimated cost of carrying one ton one mile could not be used as a standard in railroad rate making. Does not such data throw some light on the question whether an existing set of rates is excessive or not in and of itself?

A. They afford some light, but in many cases a light which would be of little service in the making of rates. This estimated cost per ton per mile does not take into account the interest on the bonded debt, and taxes, and other items of expense which the roads have to meet, and while they are of course not absolutely lost sight of, it is only when forced to make exceptional low rates in competition with water lines generally that the actual cost of hauling a ton a mile is carefully considered by the traffic officials. The reason is that it is known that this cost per ton per mile referred to, as I say, does not cover all the items of the expense that the roads are put to, but merely the transportation cost.

52. Q. Are not the average receipts per ton per mile the result of accurate calculation?

A. Yes, sir.

53. Q. Is not the estimated cost of carrying one ton one mile the result of accurate calculation?

A. Yes, sir; usually so.

54. Q. Have not the roads been in the habit of making up and recording this data for a series of years anterior to the year 1880?

A. I do not know how far back of 1880, but I think some of the roads did.

55. Q. For what purpose did they make up this data for themselves?

A. I suppose the president or general manager could perhaps answer that better than I can, but so far as I know, just as general information, and it is sometimes used in determining whether to take freight or let some one else take it, and also to watch the relations of revenue to expenses, and with a view of watching and keeping down expenses within proper limits.

Redirect examination by Mr. BAXTER:

238 1. Q. State whether the number of tons carried one mile or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, either singly or together, was ever used by you or by any other general freight agent or traffic manager to your knowledge in making competitive rates?

A. I cannot recall a case of that sort, except as previously stated when we were called upon to make exceptionally low rates or permit traffic to go by other lines, and particularly water lines. In that case sometimes the actual cost of transportation was taken into account to determine how much loss would be involved in handling such freight and whether it would be better to stand that loss or let the freight go by the other lines.

2. Q. By actual cost of transportation do you mean the entire cost of transportation, or only the additional cost of movement?

A. While I am not fully advised on that point, being not strictly in the traffic department, as I understand it, in making out the rate per ton per mile, the cost of hauling the freight, it is only the transportation cost that is referred to, and does not include interest on bonds and many items of expense that the road is subjected to.

NASHVILLE, TENN., *July 20, 1897.*

T. J. HUNTER, a witness having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. Thomas J. Hunter, Atlanta, Georgia; auditor of the Atlanta & West Point Railroad, and the Western Railway of Alabama; age, 36 years.

2. Q. State whether as auditor you have charge of the accounts of the Atlanta & West Point Railroad and the Western Railroad of Alabama, and whether the earnings on freight carried over said railroads are compiled in your office from copies of the original waybills issued by the agents of the said companies and by the agents of other railways?

A. They are.

3. Q. State whether said Atlanta & West Point Railroad and said Western Railway of Alabama are operated in conjunction with each other under the same general officers and as a continuous through line under substantially the same control; or are they operated separately and under different managements?

239 A. They are operated in conjunction with each other and under one management.

4. Q. Suppose an adjustment of rates on freight from New York, Philadelphia, &c., to Opelika, Alabama, be made on the same basis as the rates from New York, Philadelphia, &c., to the local stations on the Atlanta and West Point Railroad and the Western Railway of Alabama

east of Opelika, so as to compel these roads to cease competing from New York, Philadelphia, &c., to Opelika, what would the effect be upon the gross freight revenue of the said railroads per annum derived from the tonnage moved by the Clyde Steamship Company to Charleston and thence to Augusta and thence via the Georgia Railroad to Atlanta?

A. The loss to the line from Atlanta to Opelika by retiring from business from Eastern cities to Opelika via Clyde line to Charleston and Georgia Railroad would be $49.99 per annum in their entire gross earnings.

5. Q. Suppose the adjustment of rates referred to in the last question be made, what would the effect be upon the gross freight revenue upon said railroads per annum derived from the tonnage moved by all routes from New York, Philadelphia, &c., to Opelika?

A. The loss to the line from Atlanta to Opelika by retiring from business from Eastern cities to Opelika by all routes would be $647.76 in the entire gross earnings per annum.

6. Q. State whether the facts mentioned in your last two answers were ascertained by any compilations made by you; and if so, state how such compilation was made.

A. The figures were obtained by abstracting the waybills covering the traffic for the month of January, 1896, which was taken as a fair average of the year's business.

7. Q. Do you regard such month as being a fair average month for that entire year?

A. Yes, sir.

8. Q. Suppose an adjustment of rates on freight from New York, Philadelphia, &c., to the local stations on the Atlanta & West Point Railroad be made on the same basis as the rates from New York, Philadelphia, &c., to Opelika, what would the effect be upon the gross freight revenue of said railroad per annum derived from the tonnage moved by the Clyde Steamship Company to Charleston, thence to Augusta, thence via the Georgia Railroad to Atlanta?

A. The loss by adjustment of rates on the tonnage from Eastern
240 cities via the Clyde line, Charleston and Georgia Railroad to Atlanta and West Point local stations would be $152.68 per annum.

9. Q. Suppose the adjustment of rates referred to in the last question be made, what would the effect be upon the gross freight revenue of said railroads per annum derived from the entire tonnage moved by all the routes from New York, Philadelphia, &c., to said local stations?

A. The loss by the adjustment of rates on the entire tonnage by all roads would be $3,180.12 per annum.

10. Q. What proportion does the revenue derived by the Atlanta and West Point Railroad from first-class rates bear to the revenue derived from other classes of freight shipped from New York, Philadelphia, &c., destined to local stations on said railroad?

A. 20 2-10 per cent.

11. Q. What stations situated on said railways are competitive points, to and from which rates are generally lower than to and from local stations on said railroad?

A. Atlanta, Montgomery, Opelika, and Selma.

12. Q. Suppose an adjustment of rates on interstate freight to and from all local stations on said railways be made so as not to exceed the rate to and from either of said competitive points above named through which the business passes, what would the effect be upon the gross freight revenue of said railways per annum?

A. An adjustment of rates on interstate traffic to and from all local stations on said railways so as not to exceed the rates to and from either of the competitive points above named through which the business passes would result in a decrease in the gross freight revenue of said railways of $63,331.56 per annum.

13. Q. Suppose an adjustment of rates on interstate freight to and from said competitive points above named be made upon the same basis as the rates to and from the local stations on said railways, what would the effect be upon the gross freight revenue of said railways per annum?

A. An adjustment of rates on interstate traffic to and from each of the competitive points above named upon the basis of the rates to and from the local stations on said railways would result in a decrease of the gross freight revenue of said railways by reason of the loss of competitive business of $133,598.24.

14. Q. State whether the facts mentioned in your last two answers were ascertained by any compilation made by you; and if so, state how said compilation was made.

241 A. The figures were compiled from the original billing on file in the auditor's office covering interstate traffic of said railways for the month of January, 1896.

15. Q. State whether the month selected by you for said compilation represents a fair average of the movement of interstate traffic on said railways for that entire year.

A. The interstate traffic for the month of January, 1896, is a fair sample of the movement of interstate traffic on said railways throughout the year, and is taken as a basis to avoid the large amount of time and labor necessary to abstract the original billing of an entire year.

16. Q. Please state the total freight tonnage, except fertilizer, received at each and all the stations on the Atlanta and West Point Railroad from all points during the year ending June 30, 1896.

A. The total freight tonnage received at all Atlanta & West Point Railroad stations from all points for the year ending June 30, 1896 (not including fertilizers), is as follows:

East Point	323
McPherson	216
College Park	1,745
Red Oak	181
Monks	462
Fairburn	2,464
Palmetto	2,124
Coweta	191
Powells	486
Newnan	15,106
Moreland	1,974
St. Charles	136
Grantville	3,646

Hogansville	5,038
Speers	65
Louise	14
Whitfield	285
Lagrange	12,600
Gabbottville	539
Westpoint	18,299
Total	65,894

17. Q. Please state the total freight tonnage from Eastern cities
242 to all stations on the Atlanta and West Point Railroad for the year ending March 31, 1896; the names of the different routes by which said tonnage was moved; tonnage moved by each of said routes; the total tonnage moved by all of said routes, and the percentage which the tonnage moved by each of said routes bore to the total tonnage moved by all of said routes.

A. The tonnage from Eastern cities to stations on the Atlanta & West Point Railroad for the year ending March 31, 1896, according to the statistics reported by the Southern States Freight Association for that year, was 3,403,025 pounds, equal to 1,701.5 tons. This tonnage moved by the following routes:

Savannah, Central of Ga. Ry., via Atlanta	822,527 lbs.	24.2%
Savannah, Central of Ga. Ry., via Newnan	132,978 lbs.	12.3%
Atlanta	418,803 lbs.	12.3%
Clyde Line, Charleston & Ga. R. R., via Atlanta	132,978	3.9%
Other lines and Ga. R. R., via Atlanta	80,570 lbs.	2.4%
Southern Railway, via Atlanta	1,272,693 lbs.	37.4%
Seaboard Air Line, via Atlanta	675,454 lbs.	19.8%
Total	3,403,025	100

18. Q. Please state the total freight tonnage from Eastern cities to Opelika via all routes during the year ending March 31, 1896; the names of the different routes by which said tonnage was moved; the tonnage moved by each of said routes; the total tonnage by all of said routes, and the percentage which the tonnage moved by each of said routes bore to the total tonnage moved by all of said routes.

A. The total tonnage from Eastern cities to Opelika via all routes for the year ending March 31st, 1896, according to the statistics reported by the Southern States Freight Association for that year, was 1,909,355 pounds, equal to 954.6 tons. This tonnage moved by the following routes:

Savannah and Central Ry	35,333 lbs.	45.3%
Montgomery and Western Ry	460,374 lbs.	24.1%
Clyde Line, Charleston & Ga. R. R. & A. & W. P	21,687 lbs.	1.1%
Other lines, Ga. R. R. & A. & W. P. R. R.	30,725 lbs.	1.6%
Southern Ry. & A. & W. P. R. R.	468,878 lbs.	24.6%
Seaboard Air Line & A. & W. P. R. R.	62,358 lbs.	3.3%
Total	1,909,355 lbs.	100

243 19. Q. What was the total freight tonnage received at Opelika via the Atlanta & West Point Railroad during the year ending June 30, 1896, excluding fertilizers?

A. 4,710 tons.

30. Q. Do you know and can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross-examination by Mr. SHAVER:

1. Q. Are the freight earnings of the Atlanta & West Point Railroad Company and the Western Railway of Alabama compiled by you personally?

A. No, sir; under my charge.

2. Q. You stated that they were compiled from copies of the original waybills. Have you compared the copies with the original waybills?

A. No, sir.

3. Q. You do not, then, personally know whether they are accurate copies or not?

A. Not by comparison.

4. Q. Do the original waybills pass through your hands?

A. No, sir.

5. Q. You stated that the gross revenue of the Western Railway of Alabama and the Atlanta & West Point Railroad companies per annum on tonnage moved by the Clyde Steamship Company to Charleston and then to Augusta, and thence via the Georgia Railroad Company to Atlanta, would be reduced $49.99 if the rates on freight from New York, Philadelphia, etc., to Opelika were made on the same basis as the rates from those cities to local stations on the Atlanta & West Point Railroad and the Western Railroad of Alabama. How did you arrive at that particular sum—$49.99?

A. By applying the reduction to the waybills and taking the original figures as they read, and the difference between the two.

5. Q. Did you examine the waybills yourself?

A. No, sir; can not examine them all. I examined some, but the majority of them I did not.

6. Q. You stated that on such an adjustment as is referred to in the previous question—such an adjustment of rates—the gross freight revenue of said railroad per annum derived from the tonnage moved by all the routes from New York, Philadelphia, &c., to Opelika would be $647.76.

244 A. Yes, sir.

7. Q. How did you arrive at those figures?

A. By applying an adjusted rate to the waybills—the same as I arrived at the other—take the difference between the original and what the adjustment would be.

8. Q. Did you yourself apply the rate to the waybills?

A. No, sir.

9. Q. You stated that the gross freight revenue of said railroads derived from the tonnage moved by the Clyde Steamship Company to Charleston,

thence to Augusta, and thence via the Georgia Railroad to Atlanta would be reduced to the extent of $152.68 per annum if the rate on freight from New York, Philadelphia, &c., to local stations on the Atlanta & West Point Railroad were made on the same basis as the rate from New York, Philadelphia, &c., to Opelika. How did you arrive at that result?

A. By applying the proportion that would be accruing to those stations based on the Opelika rates—the difference between that and the original billing.

10. Q. You stated that upon the same adjustment of rates as referred to in the last interrogatory the gross freight revenue of said railroads per annum derived from the entire tonnage moved by all routes from New York, Philadelphia, &c., to said local stations would be reduced to the extent of $3,180.12. How did you arrive at that amount?

A. By applying the same process as in the previous answer.

11. Q. You named Atlanta, Montgomery, Opelika, and Selma as competitive points on said roads. What do you mean by "a competitive point"?

A. Well, a point where two or more railroads compete for the business.

12. Q. Do not two or more railroads also compete for business to Newnan and Lagrange?

A. I do not know whether they do or not.

13. Q. Is not Newnan situated on more than one road?

A. Yes, sir.

14. Q. What other roads besides the Atlanta & West Point?

A. There is a portion of the Central, one of the divisions of the Central of Georgia Railway.

15. Q. That road passes through Newnan, does it not?

A. Yes, sir.

16. Q. Does not Newnan by means of that branch of that Central of Georgia Railway have connection with a number of lines from New York and other Eastern cities?

245 A. Well, I suppose it would be the Central, but it would be a very much longer haul, I suppose, than ours. I am not familiar really with that territory. I know the Central runs in there, but I do not know that they compete with us for any business really.

17. Q. What other railroads is Lagrange on besides the Atlanta & West Point?

A. The Mobile & Birmingham, but I do not think they compete for eastern business.

18. Q. You stated that on an adjustment of rates on interstate freight to and from all local stations on the Western Railway of Alabama, and the Atlanta & West Point Railroad, so as not to exceed the rate to and from said competitive points, Selma, Opelika, Montgomery, and Atlanta, through which the business passes, the effect would be that the gross revenue of said railroads per annum would be reduced $62,331.56. How did you arrive at that result?

A. That is arrived at by the same process as the others, by revising the billing and allowing the proportions accruing to those stations that would accrue to the competitive point—the difference between the reduction and the original billing.

19. Q. If the rate from New York and other northeastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point were so

reduced as not to be made higher than New York and Atlanta rates, would not the business at these points be increased?

A. I can not answer that. I really can not say whether it would or not. I can not tell from any statement that I have prepared whether it would or not. Possibly if I got a chance to refer to the dates when the rates were lower, if they ever were, and make a comparison of the business at that time with the present time, I might be able to answer that, but I was not asked that question.

20. Q. In making the estimates or calculations which you have made as to the effect of a different adjustment of rates in reducing the revenue of the Atlanta & West Point Railroad and the Western Railroad of Alabama, did you take into consideration the fact that the reductions of the rates to those points might result in an increase of business to those points?

A. No, sir.

21. Q. In the event of Atlanta and Opelika merchants selling goods at West Point, Lagrange, Hogansville, Grantville, and Newnan and in territory adjacent in competition with the local merchants at these points, would not the merchants at those intermediate points be greatly
246 benefited in that competition by a reduction of the rates to those points so as to make them not higher than the rate to Atlanta and Opelika?

A. I do not know. I do not know that I can answer that question. I could not answer it from any information I have in my department.

22. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. I do not know. I really can not answer that.

23. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such points and an increase of its population?

A. I can not answer that. I have had no experience in that line.

24. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other, benefit the one and injure the other?

A. I should think it would, but I do not know positively; but I should think it would.

25. Q. Do not transportation rates enter into and affect the price of goods on which said rates are charged?

A. I do not know.

26. Q. Do not lower prices of goods bring such goods within reach of a greater number of people and thus increase the consumption of such goods?

A. I should think it would. I do not know, though.

27. Q. Would not the prosperity of a road be promoted to a greater extent by the prosperity of the local stations along its entire line than by the prosperity of a few widely separated trade centers or competitive points?

A. I should think it would.

28. Q. The loss which you testify would result from a certain adjustment of rates, in answer to the direct interrogatories 11 and 12, were made by compilation, I believe, you stated?

A. Yes, sir.

29. Q. Was that compilation made by you?

A. No, sir; not personally.

30. Q. By whom was it made?

A. I really can not tell. There are three or four men—it was made under my direction, though. Some of it was made by myself.

247 31. Q. Did you examine their calculations?

A. Not all of them; no, sir.

32. Q. These figures are mere estimates, are they not?

A. They are very accurate for the month we got them up. Of course they are an estimate for the year.

33. Q. For what month did you say they were gotten up?

A. The month of January.

34. Q. The freight moved during the different months of the year varies, does it not?

A. Yes, sir.

35. Q. During what part of the year is the greatest tonnage of freight moved?

A. Well, the heaviest part of the year—that varies on our road on account of the cotton business.

36. Q. When does the movement of cotton commence?

A. It commences about the first of September and lasts way into the summer.

37. Q. That movement is north?

A. North and some of it south—north and south. It is shipped to Savannah and New Orleans and thence to the North.

38. Q. Is not cotton moved south to Opelika and points between Opelika and Atlanta?

A. There is cotton moved south by Opelika and from points between Atlanta and Opelika.

39. Q. What season of the year is the greatest amount of freight from New York and other northeastern cities to Newnan, Grantville, Hogansville, La Grange, and West Point and Opelika moved?

A. That I could hardly tell. There is not much of it anyhow, as you see from those figures. It is hard to estimate. The business is so light, take any one season, and it would not amount to much.

40. Q. What season do you move most goods from New York and other northeastern cities to Opelika, Montgomery, and Selma?

A. The fall of the year.

41. Q. What month?

A. Say from about the 1st of September on the movement is pretty—say from October—say for six months from the 1st of October.

42. Q. October, November, December, January, February, and March?

A. Yes, sir; of course the shipments also of dry goods varies

248 in the different seasons. I think the month of January that we selected is about as good a month on our line to give a general movement as any month we could pick out.

43. Q. How does the movement of the remaining six months of the year compare with those six months of October, November, December, January, February, and March?

A. You mean by per cent?

44. Q. Yes, sir.

A. It would probably run between 60 and 70 per cent of those six months.

Redirect examination by Mr. BAXTER:

1. Q. How many books are kept in your office in which to keep the accounts and compile the statistics of your companies—about how many?

A. To compile statistics?

2. Q. And to keep accounts, both.

A. Probably twenty books of different kinds.

3. Q. How many waybills, vouchers, agents' reports, and other papers are examined daily in your office to keep the accounts, compile the statistics of your company—about how many?

A. I have no idea how many waybills we run a month. I could not form an idea. Probably between fifteen or twenty thousand waybills a month. Fully that many I suspect.

4. Q. How many clerks or other employees are employed in your office to keep said accounts and compile said statistics?

A. Twelve; that does not include myself.

5. Q. Are they or not under your supervision and control?

A. Yes, sir.

6. Q. Were the complications which you have referred to in your testimony in this case made by those clerks and employees under your personal direction and supervision?

A. Yes, sir; they are very competent men, too.

NASHVILLE, TENNESSEE, *July 22, 1897.*

GEORGE P. BILES, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George P. Biles, 40; occupation, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company; residence, Newport, Kentucky.

249 2. Q. How long have you been connected with the railroad freight transportation business in the United States and in what capacities?

A. Since 1884, in various capacities, such as rate clerk; afterwards assistant general freight agent and since October, 1895, general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from New York, Philadelphia, etc., to Newnan, Grantville, Hogansville, Lagrange, and West Point more than to Opelika. The rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, West Point and Opelika were in November, 1892, as follows:

[Rates in cents per 100 lbs.]

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	R.	Per bbl. F.
Newnan, Ga	131	111	98	83	69	56	....	....	....	....	....	73	....
Grantville, Ga	147	128	114	97	80	64	....	....	....	....	....	84	....
Hogansville, Ga	151	131	116	100	81	65	....	....	....	....	....	87	....
Lagrange, Ga	154	135	118	102	82	66	....	....	....	....	....	88	....
West Point, Ga	142	124	110	93	77	62	....	....	....	....	....	83	....
Opelika, Ala	114	98	86	73	60	49	36	48	40	39	58	64	70

State what, in your opinion, would be the effect of such reductions in said rates as to increasing the traffic to Newnan, Grantville, Hogansville, Lagrange and West Point so as to make up for any loss of revenue that might otherwise result. Give your reasons for any opinion you may express.

A. If the freight rates were reduced from New York, Philadelphia, etc., to Newnan, Grantville, etc., it would not, in my opinion, have the effect of increasing or building up traffic at those points to any appreciable extent. My reason for this opinion is that the rates would not have the effect of materially increasing the consumption of articles used at those points and adjacent territory. The amount of business at those points is not of great volume because of the limited population.

250 4. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned classes of freight from New York, Philadelphia, etc., to Opelika, Alabama.

A. I am unable to enumerate all the lines which in 1892 competed from New York, Philadelphia, etc., in the transportation to Opelika, Alabama, for freight classified under the numbered and lettered classes. The following lines are some of the all-rail lines, and rail-and-water lines which now compete for this business. Some of them also competed for this traffic in 1892.

All rail routes:

The Richmond and Danville Despatch.

The Atlantic Coast Despatch.

The Seaboard Despatch.

The Southern States Despatch.

The Shenandoah Despatch.

Rail and water routes:

The Virginia and Tennessee Air Line.

The Pennsylvania Southern Line.

The Piedmont Air Line.

The Seaboard Air Line.

The Mallory Line.

The Merchants and Miners Transportation Company.

The Atlantic Coast Line.

The Clyde Line.

The Ocean Steamship Company.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of the above-mentioned

classes of freight to Opelika from cities other than New York and Philadelphia?

A. I can not enumerate all of the transportation lines that competed in 1892 and which now compete for the transportation of freight to Opelika, Alabama, from cities other than New York and Philadelphia. I give below the names of some of the lines which competed in 1892 and which now compete for the transportation of traffic from the Ohio River crossings as named to Opelika.

From Cincinnati, Ohio:

The Cincinnati, New Orleans & Texas Pacific Railway.

The Louisville & Nashville Railroad.

251 From Louisville, Kentucky:

The Louisville & Nashville Railroad.

In 1892 the Louisville Southern Railroad, now known as the Southern Railway in Kentucky.

In 1892 the Chesapeake, Ohio and Southwestern Railroad, now known as the Illinois Central Railroad (Louisville division).

From Evansville, Indiana:

The Louisville & Nashville Railroad.

The Ohio Valley Railway.

From Owensboro, Kentucky:

The Louisville & Nashville Railroad.

In 1892 the Louisville, St. Louis & Texas Railroad, now known as the Louisville, Henderson & St. Louis Railroad.

From Henderson, Kentucky:

The Louisville & Nashville Railroad.

The Ohio Valley Railway.

From Paducah, Kentucky:

In 1892 the Chesapeake, Ohio & Southwestern Railroad, now known as the Illinois Central Railroad (Louisville division).

In 1892 the Paducah, Tennessee & Alabama Railroad, now known as the Nashville. Chattanooga & St. Louis Railway.

From Cairo, Illinois:

The Illinois Central Railroad.

The Mobile & Ohio Railroad.

Numerous transportation lines northeast and west of the Ohio River, as well as lines from the South Atlantic ports and Gulf ports and various Mississippi River crossings, competed in 1892 and now compete for the transportation of freight to Opelika, Alabama.

6. Q. State whether or not the rates on the above-mentioned classes of freight from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Opelika are controlled to any, and if so to what, extent by competition.

A. The rates of freight from New York, Philadelphia, etc., to Opelika, Alabama, are controlled to a very great extent by competition. The rail lines themselves form such competition, and competition exists between the various water-and-rail lines. The water-and-rail lines produce competition as between themselves and the all-rail routes. The rates

252 on the various classes of freight from the East are competitive to a greater or less extent with the rates on similar commodities shipped from Northern, Western, and Southern cities to Opelika.

7. Q. State whether or not the above-mentioned rates from New York, Philadelphia, etc., via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and Westpoint are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. In my opinion the rates from New York, Philadelphia, etc., to Newnan, etc., are just and reasonable within themselves. My reason for this opinion is that the rates from and to the points named are relatively in line with the rates existing from New York, Philadelphia, and other Eastern cities to other points similarly located in that section of the country.

8. Q. State whether the competition between carriers, whether by rail or by water, substantially effects the circumstances and conditions under which the transportation of freight is conducted.

In my opinion competition between carriers either by rail or by water substantially effects directly or indirectly, in a number of ways, the circumstances and conditions under which the transportation of freight is conducted. For example, where two or more rail transportation lines compete with each other for freight traffic from and to certain points one of the lines may inaugurate a special fast train service for the handling of business with a view of securing the bulk of the movement. Such action will ultimately force its competitors to do likewise in order to secure some of the freight, and at an additional cost which such quick service would bring about.

9. Q. State whether there is any competition at Newnan, Grantville, Hogansville, Lagrange, and Westpoint as affects rates like competition which exists at Opelika.

A. There is no such competition at Newnan, Grantville, Hogansville, etc., except as to the extent as the competition between two or more carriers may exist to Opelika, Atlanta, which points are used for constructing rates to local points on the Atlanta & West Point Railroad. Of course, any reduction which may take place in rates to Opelika or Atlanta would bring about relative reductions in rates to local stations on the Atlanta & West Point Railroad. In other words, such local stations would have the same benefit or the same relative reduction in rates as Atlanta and Opelika.

10. Q. Do you know or can you set forth any other matter or
253 thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think of anything further I can say in regard to this.

Cross-examination by Mr. SHAVER:

1. Q. You read your answers to the direct interrogatory from a manuscript before you. How long is it since you prepared those answers?

A. June 22nd.

2. Q. Were you furnished with the interrogatories before?

A. Yes, sir.

3. Q. In the event Opelika and Atlanta merchants trade at Westpoint, Lagrange, Hogansville, Grantville, and Newnan and in the adjacent

territory in competition with the local merchants at those points, would not a reduction in the rates from New York and other Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and Westpoint so as to make their rates not higher than the Atlanta and Opelika rates be of great benefit Newnan, Grantville, Hogansville, Lagrange, and Westpoint in that competition?

A. Such a course would, I think, give the local merchants at those points some benefit.

4. Q. Does not the prosperity and growth of a locality depend largely or to some extent on the prosperity of its merchants and business men?

A. Well, that depends upon circumstances. It would be reasonable to suppose, I imagine, that if the merchants were tolerably successful that it would have some influence on the community in some cases, but not in all cases.

5. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at such points?

A. Not necessarily.

6. Q. My question was, as a general rule, and in the absence of exceptional conditions, was not the natural tendency of a material reduction in rates towards improving and increasing the business of such point?

A. Well, that, again, depends on circumstances. Probably in limited cases it might have some general improvement, but I venture to say that to a large number of towns a general reduction in the rates would
254 have no material effect. The transportation rates must be of such nature as to enable the carrier to give good service to these particular points. If the rates are reduced to a basis which might be only reasonably remunerative and in some cases hardly remunerative, why it appears to me that the carriers could not be as anxious, probably, to give as effective services, whereas if the rates were fair it would enable them to give thoroughly good services, and at the same time in the building up of a community the railroad companies and the carriers themselves are a very important factor.

7. Q. You say that in the building up of a community railroads and carriers are a very important factor. Do not, therefore, the rates of transportation established by carriers have some effect in building up a community?

A. That depends, again. In a large number of cases in the South a reduction in the rates would scarcely have any effect whatever. As I said before, it does not follow that because transportation rates may be reduced that it would result in bringing about a new state of affairs to any marked degree.

8. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of these localities and discriminatory against the other benefit the one and injure the other?

A. Well, if you are speaking of localities as sections of the country, I think probably that might have some effect.

9. Q. Do not the rates of transportation affect and enter into prices of goods on which those rates are charged?

A. Yes, sir, in some cases, but in a large number of cases the transportation rates do not affect the price of the articles that are sold over the counter in the store of a retail merchant.

10. Q. In this case where you state the rates do not affect the price of the article sold over the counter to the consumer, do they not affect the cost of the article to the merchant?

A. Yes, sir; it affects the cost of the article to the merchant, but the consumer does not get the benefit. As a rule, if the reduction is made in the transportation rates, why the merchants get the benefit of it, and not the consumer.

11. Q. Do not lower prices of goods tend to bring the goods within the reach of a greater number of people, and thus increase the consumption of such goods?

A. There may be some truth in that, but transportation rates would not have that effect, because transportation rates are made per hundred pounds, whereas the articles, as a rule, are sold by weight or by
255 measurement. Therefore a reduction of a few cents per hundred pounds would not bring about any reduction or change in the retail price of those articles.

12. Q. Does not the prosperity of a road depend more upon the prosperity of the local stations along its entire line than on that of a few widely scattered trade centers or basing points?

A. A great many of the carriers have practically no local business. They have to depend on their through business. Other carriers have a fair local business, and of course a percentage of the gross earnings is due to local traffic. I believe that a great many of the carriers make special efforts to get people to emigrate. That is being done all over the South, with sometimes satisfactory results, and others fail to carry their point in this respect.

13. Q. Would not a system of rates which would tend to build up business at the local stations along the entire line of the road contribute more to the prosperity of a road than a system which discriminates against such localities in favor of widely separated trade centers or basing points?

A. That is a difficult question to answer. It depends entirely upon the circumstances and conditions forced. My experience is that reduced rates that have been or may be put in effect at local stations do not bring about satisfactory results. That is, it does not bring business there. People are not there, and they do not go there and would not go no matter what rates you may establish, whether it is the one dollar per hundred or fifty cent per hundred. It has no effect whatever.

14. Q. That is not an answer to my question. My question was whether a system of rates which would build up business at local stations along the entire line of the road contributed more to the prosperity of the road than a system which builds up widely separated trade centers or basing points at the expense of the intermediate points or territories?

A. You say a system of rates which would build up. I do not know that any system of rates could be put in effect which would build up the business of the local points, as against the trade centers that you mention; I will say in explanation of that, that so far as the Cincinnati, New Orleans and Texas Pacific Railway Company is concerned, it does not

charge higher rates to intermediate points in Tennessee than at Chattanooga, Tennessee. But it has not had the effect of increasing the local business of these points, and that has not been a question of one year or two years. I have not seen any remarkable, in fact I have not seen any increase in business, and so far as my knowledge goes I do not believe that the reduction to the local stations which may be practically
256 the same as to these trade centers would bring about what you may term a general marked improvement at these local stations. People flock to these trade centers all the time. They do not care to get off in the country.

15. Q. You said that the Cincinnati, New Orleans and Texas Pacific Railway Company makes no greater charge for the shorter than the longer haul at any point on its lines between the Cincinnati and Chattanooga. Does that road meet competition at Chattanooga?

A. Yes, sir; in transportation from Cincinnati.

16. Q. Does it not come in competition with the Louisville and Nashville Railroad and the Nashville, Chattanooga and St. Louis Railway, in transportation between Cincinnati and Chattanooga?

A. Yes, sir.

17. Q. You have testified that, in your opinion, the rates from New York and other Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point are just and reasonable in and of themselves. Is it also your opinion that the lower rates for the longer haul through those points to Opelika are just and reasonable in and of themselves?

A. I think so.

18. Q. Would those rates to Opelika be made higher but for competition?

A. I imagine they would.

19. Q. Do the Opelika rates give the carrier revenue in excess of the cost of the service of carriage?

A. I think they do.

20. Q. Is a rate in your opinion reasonable in and of itself which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. I should say not.

21. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of the carriage?

A. That is a very hard matter to determine. It is a very difficult matter to decide or to fix your rate as compared with the cost of service of operation. There are so many conditions surrounding this rate situation in regard to that, that is a very difficult thing to form.

22. Q. Can it be ascertained whether a rate yields to the carrier an increase over and above the cost of the service of carriage without first ascertaining the cost of that service?

A. I think myself that that depends somewhat upon experience. If a new railroad is opened up, it has to fix its rates, we will say, to
257 local points, to enable that carrier to meet the cost of operation. Now, the cost of operation has not been fixed, so, therefore, the rates will have to be fixed by the management as they will feel will bring about the desired result—I mean from a revenue standpoint, and which

will meet all the expenses. On the other hand, again, those rates may not be high enough to meet these expenses.

23. Q. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. If you mean by that question if freight can be handled for a longer distance for a less rate per ton per mile——

24. Q. I did not refer to the rate per ton per mile.

A. You referred to the distance, I understand.

25. Q. I will read the question again. (Counsel here repeated the question.)

A. I would like for you to explain that to me—what you mean by that.

26. Q. Well, all other things being equal, and the rate of speed being the same, the length of the train being the same, the quantity of the cars being the same, &c., would it not cost more to transport the train twenty miles than ten?

A. It would probably cost more in the aggregate.

27. Q. That is what I mean, in the aggregate; I do not refer to cost per mile.

A. It will cost more to run a train of twenty cars three hundred miles than a train of twenty cars fifty miles.

28. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Of course it takes longer for a train to go a hundred miles at the rate of fifty miles per hour than it does to go fifty miles.

29. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

30. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, &c., greater the greater the length of the haul?

A. Yes, sir.

31. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. Yes, sir.

32. Q. Does it not require more locomotives and cars and crews for running trains on a long road than on a shorter road?

258 A. Do you mean in the aggregate or do you mean as compared with the distance?

If you mean in the aggregate, I suppose it will cost more for the longer road than for the shorter road.

33. Q. I asked does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. Yes, sir.

34. Q. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

35. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on a long through haul?

A. Yes, sir; I should say so.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio River?

A. Since 1884.

36½. Q. Has the greater charge for the shorter than the longer haul over the same line, in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer-distance point?

A. I do not know that I do.

37. Q. Were not the rates from Opelika to New York and other Eastern cities in 1892 and are not those rates now the same by all the all-rail lines?

A. I can not answer that. I am not certain as to whether the rates were the same in 1892 as they are to-day.

38. Q. I did not ask that question. I asked if the rates by all the all-rail lines to Opelika were not the same in 1892, and are they not so now?

A. As I understand it, you asked me the question whether the rates in 1892 were the same by all the all-rail lines.

39. Q. By all the all-rail lines.

A. I think they were.

40. Q. Are they not the same now by all the all-rail lines?

A. It is fair to assume that they are.

41. Q. Was not the rate from New York and other Eastern cities to Opelika in 1892 the same by all the sea and rail lines?

A. I can not say positively as to that.

259 42. Q. Are not those rates the same now by all the sea and rail lines?

A. I think they are.

43. Q. Were not the rates which were in force in 1892 to Opelika established by the Southern Railway and Steamship Association?

A. I am not positive as to that.

44. Q. Was not Opelika recognized as a competitive point in the territory subject to what was called the jurisdiction of the Southern Railway Steamship Association in 1892?

A. Well, I cannot say positively as to that, but I believe it was.

49. Q. Are not the rates from Opelika to West Point, Hogansville, Grantville, La Grange, and Newnan local rates?

A. Yes, sir; they are local rates from those junction points to those intermediate points.

46. Q. Are not the rates from Atlanta to Newnan, Grantville, Hogansville, La Grange, and West Point local rates?

A. I am somewhat in doubt as to West Point, but as to the other points the rates are local from Atlanta.

47. Q. Are not the rates from New York and other Eastern cities to Newnan, La Grange, Grantville, Hogansville, and West Point made up of the through rate from New York to Atlanta or Opelika plus the local rate on from Atlanta or back from Opelika, as the case may be, to those intermediate points?

A. Yes, sir; to all points, with probably the exception of West Point.

I do not know whether the rate to West Point was based on what they call the local rate plus the rate to the junction points or not. I think probably the rates to West Point were made on what may be termed "fixed differentials" from Atlanta to Opelika, but I am not certain about that.

48. Q. You named in your direct examination a number of lines which may be formed and which you stated competed for business from various directions to Opelika. Can not all those lines also be formed to Newnan, Grantville, Hogansville, La Grange, and West Point by combinations with the Atlanta & West Point Railroad?

A. Yes, sir.

49. Q. Is not traffic transported from New York and other Eastern cities on through bills of lading naming through rates issued by the initial carrier at New York and such other Eastern cities?

A. Yes, sir.

50. Q. Do the agents of the Cincinnati, New Orleans and
260 Texas Pacific Railway Company solicit business for Newnan, Grantville, Hogansville, La Grange, and West Point?

A. Yes, sir.

51. Q. Do they not advertise the rates to such points in their printed tariffs and rate sheets?

A. They do.

52. Q. Does not the Cincinnati, New Orleans and Texas Pacific Railway Company compete with the Louisville & Nashville Railroad and other carriers and lines for business to Newnan, Grantville, Hogansville, La Grange, and West Point?

A. Yes, sir.

53. Q. Are not Newnan and La Grange on other roads than the Atlanta & West Point road?

A. Newnan, I believe, is on the Atlanta & West Point Railroad and the Central of Georgia Railway. La Grange is on the Atlanta & West Point Railroad and the Macon & Birmingham Railroad.

54. Q. Do not those other roads at La Grange and Newnan connect with lines for transportation to New York and other Eastern cities?

A. That is the case so far as Newnan is concerned. I am in doubt as to a route from the East to La Grange by way of the Macon & Birmingham Railroad?

55. Q. Does that road extend to Macon?

A. Yes, sir.

56. Q. Is not there a route from Macon to Eastern cities—a rail line or rail and water line?

A. Well, as the line extends from Macon, I do not know that there is anything to prevent business from the East to La Grange by way of the Macon and Birmingham Railway.

Redirect examination by Mr. BAXTER:

1. Q. What is the distance from Cincinnati to Chattanooga via the Cincinnati, New Orleans and Texas Pacific Railway Company?

A. 336 miles.

2. Q. How are rates made from Cincinnati to local stations on the Cincinnati, New Orleans and Texas Pacific Railway between Cincinnati and Chattanooga? Do they increase with the distance?

A. Yes, sir; according to distance.

3. Q. At what distance from Cincinnati on the Cincinnati, New
261 Orleans and Texas Pacific Railway Company do the rates which are proportioned to distance become as high from Cincinnati as are rates from Cincinnati to Chattanooga?

A. Well, probably on some classes we may meet the Chattanooga rates at the distance of 125 miles south of Cincinnati. On other classes it may be 140 miles.

4. Q. At those local stations on the Cincinnati, New Orleans and Texas Pacific Railway, between Cincinnati and Chattanooga, at which rates are as high as the rates from Cincinnati to Chattanooga, do the merchants at said local stations purchase their goods at Cincinnati or Chattanooga, or do they purchase them in the Eastern markets?

A. The purchases are made at various points. I do not think the merchants at the local stations on the Cincinnati, New Orleans and Texas Pacific Railway buy their goods in the Eastern markets. They get them from Chattanooga or from Knoxville or from Cincinnati or from Louisville. They do not go so far for markets for their goods.

5. Q. What is the reason that they do not, if you know?

A. Well, I do not know exactly, except they have been in the habit of purchasing their goods from these various nearby trade centers and probably do not care to make any change.

6. Q. They have established their credit and commercial relations with the cities located near to them?

A. Yes, sir. They exchange their freight, you know; they buy from the man in Chattanooga and they sell him something in return.

Recross-examination by Mr. SHAVER:

1. Q. Do you know, of your own personal knowledge, that the merchants at these points intermediate between Cincinnati and Chattanooga, which have the same rates as Chattanooga, do not buy their supplies of goods at Cincinnati and Ohio River points or in the East—in New York or other Eastern cities?

A. Well, I have not in view all merchants of the various towns along the lines of the road, but I think I am correct in stating that they buy chiefly from Cincinnati, Chattanooga, and Louisville.

2. Q. Chiefly?

A. Yes, sir. Of course they buy certain things at points, say, in Ohio, Indiana, and off the Ohio River, like agricultural implements and something of that sort, but I think their boots and shoes and provisions generally are bought at these other towns that I have mentioned.

3. Q. Has the Cincinnati, New Orleans and Texas Pacific
262 Railway Company suffered any great loss or material loss from charging rates to these intermediate points not higher than the rates to Chattanooga?

A. Well, we have suffered loss to the extent of the difference between the rates that are now in effect and higher rates which were in effect some years ago.

4. Q. How long since the Cincinnati, New Orleans & Texas Pacific Railway Company ceased charging higher rates to those intermediate points than to Chattanooga?

A. It was several years ago, but I can not tell you just exactly when it was.

Re-redirect examination by Mr. BAXTER:

1. Q. Is not the Cincinnati, New Orleans & Texas Pacific Railway Company in the hands of a receiver?

A. Yes, sir.

I, Frank Lyon, who was agreed upon by counsel for both parties, to act as special examiner, as set forth in their foregoing stipulation, do hereby certify that I faithfully and truly and correctly took the testimony of the above-named witnesses in shorthand and afterwards reduced it to typewriting, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This 6th day of August, 1897.

FRANK LYON,

Acting Special Examiner, 1317 F street N. W., Washington, D. C.

* * * * * * *

267 EXHIBIT No. 2.

(See testimony of Van den Burg, p. 6.)

From May 20th to June 20th. Sold to arrive via Clyde Line.

	Cars.
From Voight Milling Co., Grand Rapids, Mich., flour	11
Hicks Browns M. Co., Mansfield, O., flour	6
Northwestern Col. Co., Minneapolis, Minn., flour	10
Northwestern Col. Co., Minneapolis, Minn., bran	4
Pillsbury, Washburn M. Co., Minneapolis, bran	5
Chicago H. Mills, Chicago, grits	10
Lee Mllg. Co., Wilmington, Del., grits	5
Hedbut & Co., Terre Haute, grits	28
J. & S. Emerson, Vincennes, grits	7
H. H. McCord & Sons, New York, corn	21
Calumet G. & E. Co., Chicago, corn	10
Calumet G. & E. Co., oats	10
Piel & Co., Indianapolis, starch	12
E. & W. H. Lipe, New York, hay	23
Pillsbury, W. M. Co., Minneapolis, flour	7
Washburn, Crosby & Co., Minneapolis, flour	6
Armour & Co., Chicago, soap	4
Armour & Co., Chicago, lard	3
Armour & Co., Chicago, meat	1
Total carloads	183

Freight tariff classes and classified list of railroads in Georgia.

Freight tariff classes, percentages.

Each company doing business as a common carrier in this State is allowed to apply the standard freight tariff, subject to the conditions of the tariff class below in which such company is placed.

Class No. 1.

The standard tariff without percentage.

Class No. 2.

To classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L, M, N, O, and R add ten per cent to commissioners' standard tariff.

268 To classes C, D, F, J, and P apply the commissioners' standard tariff.

Class No. 3.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L,* N, O, the standard tariff with twenty per cent added.

On classes B, K, M, R, the standard tariff with ten per cent added.

On classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, the standard tariff with ten per cent added.

Class No. 4.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L,* N, O, the standard tariff with twenty-five per cent added.

On B, K, M, R, the standard tariff with ten per cent added.

On classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, Class L with ten per cent added.

Class No. 5.

Add twenty-five per cent to all classes except C, D, F, J, and P.

Class No. 6.

On classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L,* M,* N, O, and R*: For 40 miles and under, the standard tariff with fifty per cent added; for 70 miles and over 40 miles, the standard tariff with forty per cent added; for 100 miles and over 70 miles, the standard tariff with thirty per cent added; over 100 miles, the standard tariff with twenty per cent added.

*On fertilizers, L. C. L., Class K, with ten per cent added for any distance.

*On fertilizers, C. L., Class M, with ten per cent added for any distance.

*On turpentine, Class R, with ten per cent added for any distance.

*On classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, the standard tariff with ten per cent added.

Class No. 7.

269 On classes 1, 2, 3, 4, 5, 6, A, B, E, H, and K, commissioners standard tariff with fifty per cent added.

On Classes C, D, F, G, J, L, M, N, O, and R, commisssioners' standard tariff with twenty-five per cent added.

On Class P, commissioners' standard tariff.

Classified list of railroads in Georgia.

[For freight tariffs, see corresponding numbers on opposite page.]

Class No. 1. (No. of roads, 4.)

Alabama Great Southern.
Georgia (except G., J. and S. branch).
Lexington Terminal.
Western and Atlantic.

Class No. 2. (No. of roads, 3.)

Atlanta and Westpoint.
Hartwell.
Seaboard Air Line.

Class No. 3. (No. of roads, 4.)

Douglas and McDonald.
Florida Central and Peninsular.
Plant System (all lines).
Tifton and Northeastern.

Class No. 4. (No. of roads, 7.)

Central System (all lines except Savannah and Atlantic).
Chattanooga, Rome and Columbus.
East and West.
Lawrenceville.
Marietta and North Georgia.
Northeastern of Georgia.
Southern Railway System (all lines).

Class No. 5. (No. of roads, 3.)

Gainesville, Jefferson and Southern (branch Georgia Railroad).
270 Smithsonia and Dunlap.
Talbotton.

Class No. 6. (No. of roads, 32.)

Abbeville and Waycross.
Albany and Northern.
Augusta Southern.
Augusta and Knoxville.
Blue Ridge and Atlantic.
Chattanooga Southern.
Chicamauga and Durham.
City and Suburban.
Columbus Southern.
Cuyler and Woodburn.
Darien and Western.
Foy Railroad.

Georgia and Alabama (formerly S. A. and M. Ry.).
Georgia Midland and Gulf.
Georgia Northern (formerly Boston and Albany).
Georgia Southern and Florida.
Hawkinsville and Florida Southern.
Indian Springs and Flovilla.
Louisville and Wadley.
Macon, Dublin and Savannah.
Macon and Northern.
Middle Georgia and Atlantic.
Midville, Swainsboro and Red Bluff.
Millen and Southern.
Oconee and Western.
Sandersville.
South Brunswick.
Stillmore Air Line.
Valdosta Southern.
Wadley and Mt. Vernon.
Waycross Air Line.
Wrightsville and Tennille.

Class No. 7. (No. of roads, 2.)

Dover and Statesboro.
Sylvania.

271 *Standard freight tariff—Classes.*

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3¼	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	30	27	25	22	18	13	13	13	8½	8	18	17½	7	22
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	45	40	35	30	23	18	18	18	11½	11	23	23	8½	30
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	60	50	45	35	28	23	23	23	14	13	28	28	9	35
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

272 *Standard freight tariff—Classes*—Continued.

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**33**	**9½**	**9**
210	71	62	51	41	33	28	28	28	17	16	33	34	9½	9
220	72	64	52	42	33	28	28	28	17	16	33	34	10	9
230	73	66	53	43	34	29	29	29	18	17	34	36	10½	9
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	9
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**9**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	9
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	9
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	9
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	9
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**9**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	9
320	82	74	59	49	39	34	34	34	21	20	39	42	11	9
330	83	74	59	49	39	34	34	34	22	20	39	44	11	9
340	84	74	59	49	39	34	34	34	22	20	39	44	11	9
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**10**
360	85	75	60	50	40	35	35	35	23	21	40	46	11½	10
370	85	75	60	50	40	35	35	35	23	21	40	46	11½	10
380	88	76	61	51	41	36	36	36	25	23	41	50	11½	10
390	88	76	61	51	41	36	36	36	25	23	41	50	11½	10
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**10**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
430	91	77	62	52	42	37	37	37	26	24	43	52	11½	10
440	94	78	63	53	43	38	38	38	27	25	43	54	11½	10
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11½**	**10**
460	94	78	63	53	43	38	38	38	27	25	43	54	12	10

273 *Standard freight tariff—Classes.*

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.00	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6½	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7½	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**9**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	24.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	22
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	23
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	23
320	47	17	3.05	3.20	38.00	26.00	24.00	24
330	48	17	3.15	3.30	38.50	27.00	25.00	24
340	49	17	3.15	3.40	39.00	27.00	25.00	24
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	26
390	54	18	3.41	3.60	42.00	29.00	27.00	26
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**26**
410	56	19	3.54	3.70	44.00	31.00	29.00	28
420	57	19	3.54	3.70	44.00	31.00	29.00	28
430	58	19	3.54	3.70	44.00	31.00	29.00	28
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

274 ATLANTA & WEST POINT R. R.

Passenger, Class A (three cents per mile).
Freight, Class No. 2 (see page No. 64.)

Distance table.

ATLANTA	0
East Point	7
Manchester	9
Red Oak	12
Fairburn	19

Palmetto 25
Coweta 30
Powells 33
NEWNAN 39
Moreland 45
St. Charles 47
Grantville 51
Speers Spur 55
Hogansville 58
Whitfield 65
Lagrange 71
Gabbettville 80
WEST POINT 86

AUGUSTA & KNOXVILLE RAILROAD.

Passenger, Class A, (three cents per mile).
Freight, Class No. 6, (see page No. 64).

Distance table.

Augusta 0
Lulaville 9
Jenkins 12
Sneads 16

AUGUSTA SOUTHERN RAILROAD.

(Formerly Augusta, Gibson & Sandersville R. R.)

Passenger, Class A (three cents per mile). (Minimum passenger charge twenty cents.)
Freight, Class No. 6 (see page 64).

275 *Distance table.*

Augusta 0
Adam 5
Adventure 7
Gracewood 9
Richmond 11
Hephzibah 16
Bath 19
Blythe 22
Keysville 27
Noah 31
Matthews 32
Wren's 36
Stapleton 41
Avera 46
Gibson 51
Belle Springs 55
Mitchell 59
Agricola 62

Chalker	64
Warthen	71
Silas	78
Sandersville	80
Tennille	84

BLUE RIDGE & ATLANTIC RAILROAD.

Passenger, Class C (five cents per mile).
Freight, Class No. 6 (see page No. 64).

Distance table.

CORNELIA	0
Demorest	5
Clarkesville	8
Anandale	11
Turnerville	16
TALLULAH FALLS	21

302 *Final decree.*

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA Railway Company, The Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad; The Richmond & Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; The Atlanta & West Point Railroad Company, and the Western Railway Company of Alabama; D. H. Chamberlain, receiver, H. M. Comer, receiver, Reuben Foster and F. W. Huidekoper, receivers.
} In equity, No. 526.

This cause came on to be heard before Hon. Wm. T. Newman, judge, etc., upon the petition or bill, the answers thereto, exhibits, the testimony, stipulations, and argument of counsel.

Whereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the matters of equity alleged in the petition or bill are fully denied in the answers and are not sustained by the proof, and therefore that the said petition or bill be dismissed, and that the injunction prayed for therein be refused.

It is further ordered, adjudged, and decreed by the court that the costs of this cause shall be taxed by the clerk to be paid out of the appropriation for expenses of the courts of the United States as provided in section 16 of the act to regulate commerce.

In open court July 6, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

Petition for appeal.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, et al.	In equity, No. 526.

303 Comes the Interstate Commerce Commission this the 6th day of July, 1898, by G. L. Bell, assistant United States attorney, and in open court applies for an appeal from the final decree therein to the United States circuit court of appeals for the fifth circuit, and the said petitioner, the Interstate Commerce Commission of the United States, being a department of the Government, and this appeal being entered as such, and it appearing that the matter in dispute in said cause exceeds the sum or value of five thousand dollars, exclusive of costs, it is therefore ordered that said application for appeal be, and the same is hereby, granted and made returnable not exceeding thirty days from this date and that the same be filed in this court.

This the 6th day of July, 1898.

WM. T. NEWMAN,
United States Judge.

Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

* * * * * * *

306 *Citation.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, et al.	In equity, No. 526.

To the Clyde Steamship Company; the South Carolina Railway Company; the Georgia Railroad & Banking Company; the Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad; the Richmond & Danville Railroad Company and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia; the Atlanta & West Point Railroad Company and the Western Railway Company of Alabama; D. H. Chamberlain, receiver, H. M. Comer, receiver, Reuben Foster and F. W. Huidekoper, receivers.

You are hereby cited and admonished to be and appear at the court room of the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, on the 6th day of August, 1898, pursuant to an appeal allowed and granted by the circuit court of the United States

for the northern district of Georgia, at Atlanta, in the above-entitled case, to show cause, if any there be, why the decree of said circuit court of the United States for the northern district of Georgia, at Atlanta, rendered on the 6th day of July, 1898, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Wm. T. Newman, United States district judge for the northern district of Georgia, this 6th day of July, in the year of our Lord one thousand eight hundred and ninety-eight (1898).

WM. T. NEWMAN,
U. S. Judge.

Service.

Service of the above citation is hereby accepted and copy waived this the 14 day of July, 1898.

ED. BAXTER,
Solr. for Defendants, as of Record.

U. S. circuit court. Filed in clerk's office Jul. 6, 1898. O. C. Fuller, clerk.

307 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Northern District of Georgia:

I, Olin C. Fuller, clerk of the circuit court of the United States of America for the northern district of Georgia, in the fifth circuit, do hereby certify that the foregoing pages numbered from 1 to 586, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of the Interstate Commerce Commission against the Clyde Steamship Company; the South Carolina Railway Company; the Georgia Railroad and Banking Company; the Louisville & Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lesses of the Georgia Railroad; the Richmond and Danville Railroad Company and the Georgia Pacific Railway Company, lesses of the Central Railroad of Georgia; the Atlanta & West Point Railroad Company, and the Western Railway of Alabama, D. H. Chamberlain, receiver; H. M. Comer, receiver; and Reuben Foster and F. W. Huidekoper, receivers; as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of said court to be affixed, at the city of Atlanta, in the northern district of Georgia, in the fifth circuit, this 28th day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.] OLIN C. FULLER, *Clerk.*

308 United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

MONDAY, *December 19th, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 752.

This cause was regularly called this day, and was argued by Mr. L. A. Shaver for appellant, and by Mr. Ed. Baxter for the appellees, when the further hearing was postponed until to-morrow.

November term, 1898.

[Extract from minutes.]

TUESDAY, *December 20, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 752.

This cause came on again to be heard this day, and was submitted to the court after further argument by Mr. L. A. Shaver for appellant, and by Mr. Ed. Baxter for the appellees.

309 November term, 1898.

[Extract from minutes.]

MARCH 21, 1899.

Decree.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP COMPANY, THE South Carolina Railway Company, et als. } No. 752.

This cause come on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed that the decree of the said circuit court in this cause be, and the same is hereby, affirmed at the costs of the appellant.

310 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als., appellees. } No. 752.

Petition for appeals.—Filed April 12, 1899.

The Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said Commission, under the direction of the Attorney-General of the United States, represents that in the final decree of said circuit court of appeals, rendered on the 21st day of March, 1899, there is manifest error to its injury; and, therefore, being a department of the Government of the United States, it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

J. WARD GURLEY,
United States Attorney for the Eastern District of Louisiana.
L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

315 United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

WEDNESDAY, *April 12, 1899.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, et als. } No. 752.

Order allowing appeal.

In this cause, the Interstate Commerce Commission, by J. Ward Curley, United States attorney, and L. A. Shaver, Esq., solicitor of said Commission, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 21st day of March, 1899, to the Supreme Court of the United States, and the said Interstate Commerce Commission, being a department of the Government, and it appearing that the matter in dispute in said cause exceeds the sum of $5,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby granted, and made returnable on the 12th day of May, 1899.

DON A. PARDEE,
Circuit Judge.

APRIL 12th, 1899.

332 United States circuit court of appeals for the fifth circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 332 pages numbered from a to 331, inclusive, contain a true copy of the record upon which the cause was tried in the United States circuit court of appeals for the fifth circuit, and of all proceedings had, including the opinion of the court in the case of The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Company et als., appellees, No. 752, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 8th day of May, A. D. 1899.

[SEAL.] J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

333 *Citation on appeal.*

The United States of America, fifth judicial circuit.

The President of the United States to the Clyde Steamship Company, the Atlanta & West Point Railroad Company, and the Western Railway of Alabama et al., or to Ed. Baxter, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellant and you were appellees, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, this the 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

DON A. PARDEE,
Circuit Judge.

I hereby accept service of the above citation.

ED. BAXTER,
Solicitor for Appellees as shown of Record.

(Indorsed:) No. 752, United States circuit court of appeals, fifth circuit. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Co., the Atlantic & West Point Railroad Co., and the Western Railway of Alabama, et al., appellees. Citation on appeal. Filed April 27, 1899. J. M. McKee, clerk; J. Ward Gurley, U. S. atty.; L. A. Shaver, solicitor.

334 In the Supreme Court of the United States, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellant, *vs.* THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad Company, et al.	No. 307. (No. 751 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, appellant, *vs.* THE WESTERN & ATLANTIC RAILROAD Company et al.	No. 308. (No. 750 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, appellant, *vs.* THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company, the Western Railway Company of Alabama, et al.	No. 309. (No. 752 in circuit court of appeals.)

Stipulation as to parts of record to be printed.

It is stipulated between the attorneys for the appellant and the appellees in the above-stated cases that the following portions of the records in said cases be printed in the record in this court in case 308 only, and be omitted in printing the records in this court in cases 307 and 309, to wit:

335 1. The report and opinion of the Commission, which is the same in all three cases.

2. The opinion of the circuit court, which is the same in said three cases.

3. The opinion of the circuit court of appeals, which is the same in said three cases.

4. The stipulation entitled "Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526," and which was entered into in all three cases. Said stipulation appears on pages 94 and 95 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

5. The "Articles of association of the Southeastern Freight Association," which appear on pages from 262 to 266, inclusive, in the record in the circuit court of appeals in said case No. 308.

6. "An act to provide for the regulation of railroad freight and passenger tariffs," &c., in the State of Georgia, which appears in the record in the circuit court of appeals in said case No. 308 on pages from 314 to 321, inclusive.

7. The matter commencing with the words "Exhibit No. 6, filed by J. M. Brown," which embraces "Freight tariff classes—percentages," and also "Classified list of railroads in Georgia," which appears on pages from 305 to 308, inclusive, in the record in the circuit court of appeals in said case No. 308.

336 8. The assignment of errors, which is the same in all cases.

9. The matter entitled "The Southern States Freight Association. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 267 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

10. The matter entitled "The Southern States Freight Association. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 268 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

11. The matter entitled "Statement of average receipts per ton per mile, etc., of various railroads," which appears on pages 323 and 324 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

L. A. SHAVER,
Counsel for Commission.

ED. BAXTER,
Counsel for Carriers.

337 (Endorsed) File No. 17,421, 17,422, 17,423. Supreme Court U. S., October term, 1899. Term Nos. 307, 308, and 309. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Co. et al., the Western & Atlantic R. R. Co. et al., and the Clyde Steamship Co. et al. Stipulations as to parts of records to be printed. Filed, March 8, 1900.

(Indorsement on cover:) File No. 17,423. U. S. C. C. of appeals, 5th circuit. Term No., 309. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Company, the Atlantic & West Point Railroad Company, and the Western Railway of Alabama et al. Filed May 23, 1899. Office Supreme Court of U. S. Received May 11, 1899.

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CHAPTER I.

HISTORY AND STATEMENT OF CASES.

Among others authorized by section 13 of the act to regulate commerce to institute before the Interstate Commerce Commission complaints against carriers, are "the railroad commissioner or railroad commission of any State or Territory."

The three cases under consideration originated from three complaints made by the Georgia railroad commission pursuant to said section 13 of the law.

CASE NO. 68.

In one of these complaints the Georgia railroad commission charged that the rates of the defendants in case No. 68, the Clyde Steamship Company, the Georgia Railroad and Banking Company, et al., *from New York and other Eastern cities to points on the Georgia Railroad between Augusta and Atlanta—to wit, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain*—were, in the language of the complaint, "*unreasonable and discriminating in their nature*," and also in violation of the "*long and short haul rule*" of section 4 of the act to regulate commerce. The last charge was based upon the allegation that those rates to the intermediate points—Greensboro, Madison, Social Circle, etc.—were higher for the shorter hauls to those points than for the longer haul through those points to Atlanta.

Below is a diagram of the route involved in that case.

DIAGRAM OF ROUTE IN CASE NO. 68.

CASE NO. 69.

In another complaint the Georgia railroad commission made the *same charges* as to the rates of the defendants in case No. 69, the Western & Atlantic Railroad Company et al., from *Cincinnati to certain points on the Western and Atlantic Railroad between Chattanooga and Atlanta, to wit, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta*—these intermediate localities being the shorter distance points in that case and Atlanta the longer distance point. Following is a diagram of the route involved:

DIAGRAM OF ROUTE IN CASE NO. 69.

CASE NO. 70.

In a third complaint the Georgia railroad commission made the *same charges* against the rates of the

defendants in case No. 70, the Clyde Steamship Company, the Atlanta and West Point Railroad Company et. al., from *New York and other Eastern cities to points on the Atlanta and West Point road and Western Railway of Alabama between Atlanta and Opelika, to wit, Newnan, Grantville, Hogansville, Lagrange, and West Point*—these intermediate localities being the shorter distance points in that case and Opelika the longer-distance point. Following is a diagram of the route:

DIAGRAM OF ROUTE IN CASE NO. 70.

ACTION OF COMMISSION AND ITS ORDERS.

The Interstate Commerce Commission, after due service of the complaints on the respective defendants in the three cases, and after testimony taken and argument had in behalf of all parties in interest, found that the higher rates to the shorter distance points than to the longer distance points, Opelika or Atlanta, were not justified, and in pursuance of this finding ordered the defendants in Case No. 69 to desist from charging higher rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta than they charged for the longer haul through those points to Atlanta; and in Case No. 68 ordered the defendants to desist from charging higher rates from New York to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain than they charge for the longer haul through those points to Atlanta; and in Case No. 70 ordered the defendants to desist from charging higher rates from New York and other Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and Westpoint than they charged for the longer haul through these points to Opelika.

The defendants refused to obey these orders of the Commission, and thereupon the Commission, under section 16 of the act to regulate commerce, instituted in the circuit court of the United States for the north-

ern district of Georgia the present proceedings in equity for the enforcement of said orders.

ACTION OF THE COURTS.

The circuit court rendered a decree in each of the cases denying the prayers of the Commission and dismissing its bills of complaint. The circuit court of appeals affirmed the decrees of the court below. Appeals have been duly taken to this court from the decrees of the circuit court of appeals and errors assigned.

ASSIGNMENTS OF ERRORS.

The assignments of errors were the same in all three cases. The first four are general, and assign as error the action of the circuit court of appeals, in affirming the decree of the court below, in not reversing said decree, in not rendering a decree for the enforcement of the *entire* order of the Commission, and in not rendering a decree for the enforcement of the order of the Commission as to *each* of the shorter distance points, the rates to which were involved in said cases. The *specific* assignments of error are as follows:

5. Said circuit court of appeals erred in holding that "the Commission was not" in the proceedings before it "called upon to find whether the respective rates in question were reasonable and just or not."

6. Said court erred in holding that the Commission, in the proceedings before it, "was not called upon to

find whether the rates charged to the shorter distance points gave an undue or unreasonable preference or advantage to the longer distance points, or subjected the shorter distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever."

7. Said court erred in holding in effect "that on applications like this the courts are limited to a review of the grounds on which the Commission acted, and have not and should not exercise jurisdiction on the whole subject-matter, and on the law and facts determine whether the tariff of rates complained of is just and reasonable, and whether it gives any undue or unreasonable preference to the longer distance points, or subjects the shorter distance points to any undue or unreasonable prejudice or disadvantage."

8. Said court erred in holding in effect that rates established by *agreement* between competing carriers are the result of or fixed by competition, and not the result of or fixed by such *agreement.*

9. Said court erred in holding that "a careful consideration of the circumstances and conditions shown by the proof constrains to the conclusion that the difference in the circumstances and conditions has caused the difference that is complained of in the rates."

10. Said court erred in holding that the dissimilarity in conditions resulting from competition at the longer distance points is so great as to justify the discrimination in rates complained of against the shorter distance points, which are "junction points reached by more than one railroad."

11. Said court erred in holding that "the most careful consideration of the testimony brought up in the records in these causes does not disclose any evidence

that was offered by the appellant in the circuit court *tending to show* that the rates, separately considered, to the respective points are not reasonable and just."

12. Said court erred in holding that "the great volume of testimony given by the witnesses for the appellees is directly and clearly to the effect that the rates are reasonable and just."

13. Said court erred in holding that the fact as to whether or not rates are reasonable and just "is hardly susceptible of better proof than the *opinions* of 'railroad officials.'"

14. Said court erred in holding that the fact that rail rates are lower "than can be obtained by any other means of transportation" is evidence of their reasonableness.

15. Said court erred in holding that the facts that the rates in question "have not prevented the shipment of freights," and "traffic has been shipped under them with profit," are evidence of the reasonableness of such rates.

16. Said court erred in holding that the fact that the rates to the shorter distance points are made up of (or based upon) the competitive rates to competitive points, and the local rates from such competitive points to the shorter distance points, is evidence of the reasonableness of the entire through rates to the latter points.

17. Said court erred in holding in effect that rates to the longer distance competitive points which are not "fully remunerative have a tendency to reduce local rates and to improve the local service."

18. Said court erred in holding that carriers have a right, on the ground of competition, to charge to competitive points rates which do not yield "a full measure of reasonable remuneration."

19. Said court erred in holding that the appellant did not contend in said court that "the rates to any of the points, considered separately, are too high or too low, or are not reasonable and just."

20. Said court erred in holding in effect that because the order of the Commission "can not adequately meet the requirements of the first and third sections," it should not be enforced to the extent it does afford relief under those sections.

21. Said court erred in holding in effect that the order of the Commission should not be enforced because under it the appellees may still, if they see proper, discriminate against the shorter distance points in favor of the longer distance point, to the extent of giving the former as high rates as the latter, inasmuch as the order of the Commission only requires the appellees to desist from charging higher rates to the former than to the latter. (Record in case 69, pp. 265–267.)

Chapter II.

THE ISSUES PRESENTED BY THE PLEADINGS BEFORE THE COMMISSION AND IN COURT.

THE COMPLAINTS BEFORE THE COMMISSION AND THE BILLS OF COMPLAINT IN COURT MAKE THE SAME THREE CHARGES, NAMELY, THAT THE RATES OF THE DEFENDANTS TO THE SHORTER DISTANCE POINTS ARE (1) UNREASONABLE IN THEMSELVES, (2) UNJUSTLY DISCRIMINATORY AS BETWEEN THE SHORTER AND LONGER DISTANCE POINTS, (3) AND IN VIOLATION OF THE LONG AND SHORT HAUL RULE OF SECTION 4.

ERROR OF CIRCUIT COURT OF APPEALS IN HOLDING THAT THE COMMISSION WAS NOT CALLED UPON TO CONSIDER THE REASONABLENESS IN THEMSELVES OF THE RATES TO THE SHORTER DISTANCE POINTS.

ERROR OF THE CIRCUIT COURT OF APPEALS IN HOLDING THAT THE REASONABLENESS IN THEMSELVES OF THE RATES WAS NOT INVOLVED IN THE CHARGE THAT THESE RATES VIOLATED THE LONG AND SHORT HAUL RULE OF SECTION 4.

ERROR OF CIRCUIT COURT OF APPEALS IN HOLDING THAT THE COMMISSION WAS NOT CALLED UPON TO CONSIDER THE LAWFULNESS OF THE RATES UNDER SECTION 3.

1. The language of the three complaints filed by the Georgia Railroad Commission before the Interstate

Commerce Commission is, as before stated, that the rates complained of to the shorter distance points were "UNREASONABLE AND DISCRIMINATING IN THEIR NATURE AND IN DIRECT VIOLATION OF SECTION 4 OF THE ACT TO REGULATE COMMERCE."

(Record in case 69, bot. p. 7.)

This is an averment that said rates were in violation of sections 1, 3, and 4 of the law.

(a) *Rates unreasonable in themselves in violation of section 1 of the law.*

The allegation that the rates were "*unreasonable in their nature*" charges a violation of section 1 of the law which requires all rate charges to be reasonable and just in themselves.

The circuit court of appeals in its opinion sustains this proposition by holding that one of the charges in the complaints before the Commission is "that the rate of freight charged to the shorter distance point is unreasonable," and that the defendants "deny that the rates complained of are unreasonable or unjust and insist that they are in themselves reasonable and just."

(Record in case 69, pp. 268, 271.)

Counsel for the carriers practically recognized that the reasonableness in themselves of the rates to the shorter distance points was in issue by attempting to

prove their reasonableness by all his witnesses on direct examination.

(*b*) *Rates in violation of section 3 of the law.*

The allegation that the rates were "discriminating in their nature," when taken in connection with the fact that discrimination between *localities* is referred to, is a charge of violation of section 3 of the law, which, among other things, forbids undue or unreasonable preferences in rates between different *localities*.

Discrimination is a *general* term, embracing discriminations between *shippers* under section 2 of the law and discriminations between *localities* under sections 3 and 4 of the law.

Section 2 of the law does not cover discrimination between *localities*, but only between shippers. In the case of *Wight* v. *The United States* (167 U. S., p. 518), Mr. Justice Brewer, in speaking of section 2, says:

"It was the purpose of the section to enforce equality between *shippers*, and it prohibits any rebate or other device by which two *shippers* shipping over the same line, the *same distance*, under the same circumstances of carriage, are compelled to pay different prices therefor." (167 U. S., p. 518.)

The complaints in these cases relate to discriminations in the form of undue preferences between different *localities*—the shorter and longer distance

points—and not to discriminations between *shippers* under section 2. The charge, therefore, that the rates are "*discriminating in their nature*," considered in connection with the facts on which it is based, is in legal effect a charge of violation of the provision of section 3, forbidding undue preferences in rates as between *localities*.

(c) *Allegation of violation of section 4 of the law.*

The allegation that the rates in question were in violation of section 4 of the law, charges departures from what is known as the "long and short haul rule" of that section, which forbids the charging or receiving "under substantially similar circumstances and conditions a greater compensation in the aggregate for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance."

The pleadings before the court.

The petitions or bills of complaint filed in court in these cases embody, and have attached as exhibits, copies of the complaints filed by the Georgia railroad commission. These bills of complaint filed in court each allege that it had been "*made to appear to the satisfaction of said commission*" (the Interstate Commerce Commission) "*that the said defendants had violated the provisions of the 'Act to regulate commerce' in certain respects as was stated in said petition herein*

referred to as a part hereof" (petition by Georgia railroad commission). (Record in case 69, bot. p. 3.)

The bills of complaint, therefore, present for determination by the courts the questions, whether the *three charges* in the complaints of the Georgia railroad commission, to wit, the charge, under section 1 of the law, that the rates to the shorter distance points are unreasonable in themselves, and the charges under sections 3 and 4 that the rates are unduly preferential to the longer distance points, *or either of those charges*, are sustained.

The answers filed in court by the defendants traverse these three charges and aver that the rates in question are reasonable in themselves, and not *unjustly* discriminatory under either section 3 or 4 as between the shorter and longer distance points. In these answers the disparity in rates, or, in other words, the discrimination between the shorter and longer distance points is admitted, but it is averred that this discrimination is not *unjust* because of an alleged substantial dissimilarity of circumstances and conditions resulting from competition in transportation to the longer distance points.

2. *Error of circuit court of appeals in holding that the Commission was not called upon to consider the reasonableness in themselves of the rates to the shorter distance points.*

The circuit court of appeals held that the "Commission was not called upon to find whether the respective rates in question were reasonble and just or not."

(Record in case 69, p. 270; fifth assignment of error.)

We think that in this the court erred. The court places this ruling, as seen from the sentence preceding it, upon the ground that the "cases were considered and decided by the Commission as cases presenting violations of the fourth section of the act to regulate commerce." It may be conceded, *arguendo*, that the Commission did consider and decide the cases under section 4 alone and it would not follow that the Commission was *not called upon* to consider and decide the cases under section 1.

As we have seen, the complaints before the Commission distinctly averred violations of section 1, and the answers of the defendants traversed that charge. This matter was therefore presented to the Commission by the pleadings before it and, if there was evidence bearing upon it, should have been considered.

The reasonableness in themselves of the rates is also, as we have shown, put in issue by the *pleadings in court. It is therefore incumbent upon the court to consider the question, inasmuch as the proceedings in court are proceedings de novo*, as we will show in a subsequent chapter of this argument.

Furthermore, if the cases were, and could only be, considered and decided under section 4, the reasonableness in themselves of the rates was a matter relevant to, if not necessarily involved in, the issue presented under that section.

If the excess of the rates to the shorter distance points over those to the longer distance points resulted from unreasonably high rates to the former, then it is conceded that competition at the latter can not justify such excess. In *Louisville and Nashville Railroad Company* v. *Behlmer* (175 U. S., p. 649), this court (Mr. Justice White delivering the opinion) holds "*that, while the carrier may take into consideration the existence of competition as the producing cause of the dissimilarity of circumstances and conditions, his right to do so is governed by * * * the absolute command of the statute that all rates shall be just and reasonable.*"

3. *Error of circuit court of appeals in holding that the Commission "was not called upon to consider and determine the reasonableness of the rates under section 3 of the law."*

The circuit court of appeals further held that "for the same reason" (namely, that the Commission only considered the case under section 4) "the Commission *was not called upon* to find whether the rates charged to the shorter distance points gave an undue or unrea-

sonable preference or advantage to the longer distance points, or subjected the shorter distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever."

(Record in case 69, p. 270; seventh assignment of error.)

As the charge that the rates were in violation of section 3 was, as we have shown, distinctly presented for determination by the Commission and is in issue before the court, what we have said on this point above in subdivision 2 of this chapter applies here.

A charge of violation of the rule of section 4, moreover, is a charge of a violation of the provision of section 3, forbidding undue preferences as between localities, because section 4 denounces a particular species of undue preferences between localities, *which is and would have been unlawful under section 3.*

By making the greater charge for the shorter than the longer haul, *which was already unlawful under section 3*, the subject of specific denunciation in a subsequent and distinct section of the law, Congress only intended to emphasize its disapprobation of this species of unjust discrimination between localities and to point it out as one of the principal evils which the law was designed to remedy.

Chapter III.

CASES BEFORE THE COURT ARE PROCEEDINGS DE NOVO, ORIGINAL AND INDEPENDENT SUITS BASED ON NEW PLEADINGS AND NEW EVIDENCE.

Throughout the opinion of the circuit court of appeals stress is laid upon the alleged fact that the "opinion and decision of the Commission proceeds and rests" only on the fourth section of the law, and the court correctly states that counsel for the Commission, without conceding that the action of the Commission was based solely on the fourth section, contended, both in the circuit court and in the circuit court of appeals—

> "That on applications like these the courts are not limited to a review of the grounds on which the Commission acted, but have and should exercise jurisdiction of the whole subject-matter, and on the law and facts determine whether the tariff of rates complained of is reasonable and just or not, and whether it gives any undue or unreasonable preference to the longer distance points, or subjects the shorter distance points to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The circuit court of appeals does not expressly rule that this position of counsel for the Commission is incorrect, but manifestly was controlled in its decision

of the cases largely by the alleged fact that the Commission based its action on section 4 alone.

We think that the position of counsel for the Commission is in accordance with the statute and the uniform decisions of the courts—and particularly where, as in the present cases, new testimony in addition to that before the Commission was taken, *and practically new cases made out, before the courts.*

Section 16 of the act to regulate commerce, under which these cases were instituted, provides, among other things, that when a lawful order of the Commission has been violated by a common carrier—

"It shall be lawful for the Commission * * * to apply in a summary way, by petition, to the circuit court of the United States sitting in equity * * * and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter *speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises;* and to this end such court shall have power, if it think fit, *to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.*"

Provision is thus made for the institution of an original suit, new pleadings, and new evidence, and the only limitation upon the court is that it shall "speedily" determine the matter involved "in such manner as to do *justice* in the premises." The leading idea of this enactment is the administration of *justice* speedily and without adherence to forms.

In construing section 16 of the law, the circuit court said in the "Social Circle case:"

"The Commission denies the power of this court to hear the case upon any other *issues*, pleadings, or facts than those presented to the Commission. It is claimed that the case is to be determined with reference to what the Interstate Commerce Commission had before it, and that *no additional issues* or questions should be raised or other evidence taken. The language of the act of Congress does not support this contention. * * * The question may be considered as settled, not only by the language of the act of Congress, but by authority, against the position assumed by counsel for the Commission." (56 Fed. Rep., pp. 934, 935.)

In the case of the *Interstate Commerce Commission* v. *Cincinnati, New Orleans and Texas Pacific Ry. Co. et al.*, Judge Sage, in delivering the opinion of the circuit court at Cincinnati, said:

"The court is to sit as a court of equity, without the formal proceedings applicable to ordinary suits in equity, but in such manner as *to do justice in the premises*. It is so provided in section 16 of the act. The intention of Congress evidently was to vest in the court *a large discretion*." (64 Fed. Rep., pp. 984, 985.)

In the case of *Shinkle, Wilson & Kreis Co. et al.* v. *Louisville and Nashville R. R. Co. et al.* in the United States circuit court at Cincinnati, Judge Lurton, in the opinion delivered by him, says:

"If it shall then" (that is, on final hearing in a suit in court to enforce an order of the Commission) "appear *on all the evidence heard and submitted* that the order of the Commission was lawful and reasonable and that it had been violated, it shall be lawful for such court to issue a writ of injunction or other proper process to prevent further disobedience of such order. Now, it is well settled that *the court is not the mere executioner of the orders of the Commission.* The suit in this court is an *original and independent proceeding.* This court is *not confined to a mere examination of the matter as heard by the Commission.* It proceeds to hear the complaint *de novo.*" (62 Fed. Rep., p. 693.)

The duty and power of the court to "inquire into the facts on its own account" and try the case *de novo* are recognized in the Import Case (162 U. S., 239).

In the recent case of the *Interstate Commerce Commission* v. *Alabama Midland Rwy. Co. et al.* (168 U. S., 175), this court says:

"It has been uniformly held by the several circuit courts and the circuit courts of appeal in such cases that they are not restricted to the evidence adduced before the Commission, nor to a consideration merely of the power of the Commission *to make the particular order* in question, but that additional evidence may be put in by either party, and that the duty of the court is to decide *as a court of equity upon the entire body of evidence.*"

It thus appears, as held by the circuit court in the "Social Circle case," that the courts have the power to hear these cases upon "*other issues, pleadings, and facts than those presented to the Commission;*" that, as held by Judge Sage in the case of the Commission against the C., N. O. & T. P. Ry. Co., Congress intended in these cases "*to vest in the courts a large discretion*" and that it is the duty of the courts as courts of equity "*to do justice in the premises;*" that, as held by Judge Lurton in *Shinkle, Wilson & Kries Company* v. *L. & N. R. R. Co.*, "*the court is not the mere executioner of the orders of the Commission,*" but "*the suit in court is an original and independent proceeding*" and "*the court is not confined to a mere examination of the matter as heard by the Commission, but proceeds to hear the complaint de novo;*" and that, as held by *this court*, in the Alabama Midland case "*the courts are not restricted to the evidence adduced before the Commission, nor to a consideration merely of the power of the Commission to make the particular order in question, but that additional evidence may be put in by either party, and that the duty of the court is to decide as a court of equity upon the entire body of the evidence.*"

As we have stated, new and additional evidence was introduced before the court in these cases.

Chapter IV.

IN CAUSES BEFORE THE COURTS ERRORS OF THE COMMISSION IN PROCEEDINGS BEFORE IT ARE IMMATERIAL, IF CONCLUSION ARRIVED AT IS JUSTIFIED BY "THE ENTIRE BODY OF THE EVIDENCE" BEFORE THE COURTS.

ERROR OF THE COMMISSION IN REFUSING TO CONSIDER COMPETITION BY CARRIERS SUBJECT TO THE ACT EXCEPT UNDER THE PROVISO TO THE FOURTH SECTION OF THE ACT.

DISTINCTIONS, IN RESPECT TO THIS MATTER, BETWEEN "BEHLMER CASE" AND THE PRESENT CASES.

ALLEGED ERROR OF THE COMMISSION IN BASING ITS ORDER ON SECTION 4 ALONE.

COURT MAY MODIFY ORDER OF COMMISSION.

In these cases the Commission held that it could not consider competition by carriers subject to the act to regulate commerce, unless it was set up by application to the Commission under the proviso to the fourth section of the act.

The Supreme Court, in the "*Alabama Midland Case*" (168 U. S., p. 175), held this position of the Commission to be erroneous. In view of the fact, however, as

shown in the preceding Chapter III of this argument, that the proceeding before the court is *de novo*, and it is the duty of the court "to do justice in the premises, as a court of equity, on the entire body of the evidence," it is immaterial what errors either of law or of fact may have been committed by the Commission in the proceeding before it, if the conclusion arrived at by the Commission is authorized by the evidence before the court.

This was held by Judge Severens in the case known as "*the Chattanooga Case*" (85 Fed. Rep., p. 110). In that case the Commission held, as in the present cases, that it could not consider competition by carriers subject to the act except on application by carriers under the proviso to the fourth section. In commenting upon this, Judge Severens says:

> "*In this undoubtedly the Commission was in error. The contrary doctrine is now well established. But this error is not material. The legal reason given may be wrong and the order right if, upon the facts, the latter should be found by the court to be warranted by law.* Nor would it affect the duty of the court if the Commission had founded its order upon one provision of the act and the facts brought the case within some other."

The question before the court, then, is whether the conclusion arrived at by the Commission was lawful, and not whether the Commission pursued the correct course or process of reasoning in arriving at that conclusion.

DISTINCTIONS BETWEEN THE PRESENT CASES AND L. & N. R. R. CO. v. BEHLMER (175 U. S., P. 648).

In the case, *supra*, known as the "Behlmer Case," the Commission made the same erroneous ruling, and this court for that reason practically remanded the case to the Commission for rehearing and reinvestigation. There are material distinctions in respect to this question, however, between the "Behlmer Case" and the present cases.

(1) In the first place, in the "Behlmer Case" the Commission proceeded in its investigation no further than to find the simple fact that the competition pleaded was by carriers subject to the act. It did not find the facts showing the nature and force of that competition. The decision of the Commission was based solely on the ground that competition by carriers subject to the act could not be considered except under the proviso.

(2) In the "Behlmer Case," the circuit court of appeals, from whose decision in favor of the Commission the case was brought on appeal to this court, sustained this erroneous ruling of the Commission and based its decision largely thereon.

(3) Little or no additional testimony was taken in the "Behlmer Case" after it reached the courts. No

new case was made out by additional testimony, and it was decided practically on the testimony before the Commission.

In all these respects the present cases are distinguishable from the "Behlmer case."

(1) In the present cases the Commission found all the facts relating to competition—not only the fact that the competition was by carriers subject to the act, but also the facts showing the nature and force of that competition.

(2) When the present cases reached the court, new testimony in addition to that adduced before the Commission and larger in amount, relating to competition and the other matters in issue, was presented to the court. *The case was reopened and practically a new case made out.*

(3) Both the courts below considered and weighed all this testimony, and the defendants have had a full hearing before the courts, both in the way of testimony and argument, on the question of competition. *They have had their "day in court" and the benefit of "due process of law" in its fullest extent.*

(4) The error of the Commission was not in failing to find the facts fully, but was an *error of law.* If the Commission had "unduly restricted its inquiries

into the facts," the court has the *discretion* to either inquire into the facts on its own account or remand the case to the Commission for reinvestigation.

(*Texas and Pacific Railway Co.* v. *Interstate Commerce Commission*, 162 U. S., 239.)

Where, however, as in the present cases, the Commission did not "unduly restrict its inquiries into the facts," but only made a mistake of law, it is eminently the function of the courts to correct such error of law.

The decision of the Commission on the facts before it can be of comparatively little value after additional testimony has been taken before the courts.

SECTION 3 MAY APPLY WHERE SECTION 4 DOES NOT.

Counsel for the carriers, while contending that the Commission erred in basing its orders, as he alleges it did, on the fourth section of the law only, yet admits that—

"Though the Commission may have erred in basing the orders made by it in these cases on the fourth section, *yet if said orders are lawful under the third section it will be the duty of the court to enforce them.*" (Printed argument for carriers.)

And again he says:

"Though the circumstances and conditions at the longer distance points may be substantially dissimilar

from those at the shorter distance points, and though such dissimilarity may take the case out of the operation of the fourth section, the third section remains; and if it can be shown that the disparity in rates constitutes an undue preference of the longer distance points, the orders of the Commission ought to be enforced." (Printed argument for carriers.)

COURT MAY MODIFY ORDER OF COMMISSION.

It is not necessary in these cases that the court should modify the orders of the Commission, which simply forbid the greater charges for the shorter than the longer hauls, because those orders, as shown in a subsequent chapter of this argument, are adapted to remedy violations of either sections 3 or 4 of the law. It would appear, however, from the language used by the courts, as set forth in the preceding Chapter III of this argument, and particularly that used by this court in the "Alabama Midland Case," namely, that the courts are not "restricted to a consideration merely of the power of the Commission to make *the particular order in question*," that the courts may, if necessary to "do justice in the premises," as commanded by the statute, modify the order of the Commission or make such new or different order as under the law and "the entire body of the evidence" may, in the judgment of the court, be just and proper.

Chapter V.

Power of the Commission to enforce sections 3 and 4 of the law recognized by this court.

In *Interstate Commerce Commission* v. *Cincinnati, New Orleans and Texas Pacific Ry. Co.* (167 U. S., p. 506), this court, while denying power in the Commission to enforce section 1 of the law *by prescribing* rates to be charged by carriers, "maximum, minimum, or absolute," expressly recognizes the authority of the Commission to enforce the provisions of section 3 of the law, forbidding undue preferences in rates as between localities, and to enforce the long and short haul rule of section 4.

In reference to these matters the court, after denying power in the Commission to prescribe rates, says:

"But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with

this knowledge it is charged with the duty of seeing that there is *no violation of the long and short haul clause;* that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that *no undue preferences are given to one place or places* or individual or class of individuals, but that in all things that equality of right which is the great purpose of the interstate commerce act shall be secured to all shippers."

This court thus expressly holds that, although the Commission is not authorized under section 1 to prescribe rates, it has the power to enforce the provisions of sections 3 and 4 of the law.

Chapter VI.

PLEA OF COMPETITION—ANSWERS THERETO.

As before stated, competition in transportation to the longer distance points, Atlanta or Opelika, is the sole defense set up by the carriers in these cases for the admittedly higher rates to the shorter distance points than to Atlanta or Opelika.

The defendants do not allege any dissimilarity in the circumstances and conditions *relating to the nature and character of the service* of transportation to Atlanta or Opelika on the one hand and the shorter distance points on the other, but plead in justification of their discriminations against the shorter distance points such dissimilarity as existing because of *competition* encountered in transporting traffic to Atlanta and Opelika, which, it is claimed, is not met to *the same extent* in such transportation to the shorter distance points.

The question is, then, whether these cases fall in the category of *extreme or exceptional cases in which alone*, as we will hereinafter show, Congress intended that competition should justify exemption from the rule of the law.

ANSWERS TO PLEA OF COMPETITION.

The main propositions for which we shall contend in answer to the plea of competition are:

First. That the rates to the longer-distance points, Atlanta and Opelika, were established by *agreement* between the carriers, and are not the product of competition.

Secondly. That the rates to the longer-distance competitive points, Atlanta and Opelika, are reasonably high in themselves, and that when rates to competitive points are reasonably high in themselves, whether left so by competition or made so by agreement, there is no justification for higher rates to shorter-distance local points.

Thirdly. That the rates to the shorter-distance points are in themselves excessive or unreasonably high, and that competition can not justify rates which are excessive or otherwise unreasonable in themselves in violation of section 1 of the law.

Fourthly. That even where some discrimination is justified because of the greater force of competition at the locality in favor of which the discrimination is made, the discrimination actually practiced may be *excessive*, and in these cases it is excessive.

Fifthly. That under the decisions of this court competition can justify discrimination only when such discrimination will promote the interests of the public as well as of the carrier, and that the interest of the public at the numerous shorter-distance points discriminated against are not promoted, but prejudiced by the discrimination shown in these cases, and that no *legiti-*

mate interest at Atlanta or Opelika or of the carriers will be prejudiced by doing away with this discrimination.

Sixthly. That the injury or prejudice to the shorter-distance points shown by the proof in these cases to be the effect of the discriminations practiced against them in favor of Atlanta or Opelika brings these cases within the evil which the act to regulate commerce was designed to remedy, and that competition, no matter how forceful, should not be held to nullify the law itself; in other words, *should not be held to justify the very wrongs which the law was enacted to remedy.*

Seventhly. That inasmuch as the orders of the Commission are simply that the carriers desist from charging higher rates to the shorter-distance points than to Atlanta or Opelika, they may be complied with, if the carriers so elect, by giving the shorter-distance points rates as high as those to Atlanta or Opelika, thus ignoring the natural advantage of the former in being the shorter-distance points, and that this will be a reasonable allowance for any possible dissimilarity of conditions resulting from the greater force of competition, if any, at Atlanta or Opelika than at the shorter-distance points.

Chapter VII.

THE PLEA OF COMPETITION.

CASES IN WHICH AND EXTENT TO WHICH COMPETITION MAY JUSTIFY EXEMPTION FROM THE RESTRAINTS OF SECTIONS 3 AND 4 OF THE LAW.

COMPETITION WHICH AFFECTS RATES NOT CONCLUSIVE.

OTHER MATTERS BESIDES COMPETITION TO BE CONSIDERED.

At the outset it is material to inquire in what cases and to what extent this court has held competition may justify discrimination.

Section 4 of the interstate-commerce law forbids the greater charge for the shorter than the longer haul only when the circumstances and conditions attending the transportation are "*substantially similar.*" *Section 3* forbids preferences between localities when they are *undue or unreasonable*, and this court holds that they are undue or unreasonable when the transportation is conducted under "*substantially similar circumstances and conditions.*"

The question, then, in these cases, under sections 3 and 4, is whether the circumstances and conditions

relating to the transportation to the shorter and longer distance points, respectively, are "*substantially similar.*" If they are substantially similar, then the discriminations against the shorter-distance points are unjust and unlawful.

In the *Alabama Midland Case* (168 U. S., 164), it is true this court held that competition is "one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar," and that competition may, therefore, justify preferences under section 3 of the law, and the greater charge for the shorter than the longer haul under section 4.

The court then, however, takes particular pains to quality or limit this proposition as follows:

"In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that *the mere fact of competition*, no matter what its character or *extent*, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the question of 'undue or unreasonable preference or advantage,' or what are 'substantially similar circumstances and conditions.' The competition *may* in some cases be such as, having due regard to the *interests of the public and of the carrier*, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration." (168 U. S., 167.)

"The mere fact of competition" does not, therefore, under this decision take a case from under the law as laid down in the third and fourth sections, but only relieves the carrier from the restraints of those sections when the competition is of such "character and extent that the interests of the public," as well as of the carrier, demand such relief; and the court further holds that whether the competition is of such character and extent that the interests of the public and the carrier justify exemptions from the restraints of the third and fourth sections, is a question of fact to be determined by the testimony in each case and not a question of law.

The above extract from the opinion of this court in the "Alabama Midland case" is quoted and the propositions therein reaffirmed by this court in *Louisville and Nashville Railroad Co. et al.* v. *Behlmer* (175 U. S., 649), and which will hereafter be referred to as the "Behlmer case." The following is the language of this court in that case:

"It follows that whilst the carrier may *take into consideration* the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, *the absolute command of the statute that all rates shall be just and reasonable* and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may, in many cases, be involved in the determination of whether competition was such as created a substantial dissimilarity of condition; second, that the competition relied upon be *not*

artificial or merely conjectural, but *material and substantial*, thereby operating on the question of traffic and rate making, *the right in every event to be only enjoyed with a due regard to the interest of the public*, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered."

Judge Severens, in the opinion of the circuit court delivered by him in the Chattanooga case, in discussing the "Alabama Midland Case," says:

"In the case of the *Interstate Commerce Commission* v. *The Alabama Midland Railway Company* (168 U. S., 144) the Supreme Court, while reaffirming the doctrine that competition between railway carriers might and frequently ought to be considered in adjusting rates under the long and short haul clause, *yet took pains to prevent the inference from its opinion that it should be regarded as a controlling consideration.*" * * *

"Congress must have intended something unusual and peculiar, out of the ordinary course of business, as that which would create a substantial dissimilarity; otherwise the vast bulk of transportation would not be subject to the rule at all." (Record, p. 374.)

That Congress did not intend that competition should in all cases justify the greater charge for the shorter haul under section 4 appears from the fact testified to by all the witnesses, both for the complainant and for the defendants, that, at the time the act to regulate commerce was passed and prior thereto and since, the greater charge for the shorter than the longer haul over

the same line in the same direction, the shorter being included in the longer, only existed in cases of *competition in transportation* to the longer distance point.

It is to be presumed that Congress knew this fact, and having this knowledge, that it did not intend that competition in transportation should be an excuse in all cases, but only in certain extreme cases, where, in the language of the Supreme Court, the interests of the public as well as of the carrier demand it.

To hold otherwise would be placing Congress in the absurd position of laying down a rule and then providing that the rule should not be enforced in the only cases in which violations of the rule were known to exist—in other words, enacting a law and providing at the same time that it should be of no effect.

COMPETITION WHICH AFFECTS RATES NOT CONCLUSIVE.

Counsel for the carriers admits that the "*mere fact of competition*" is not sufficient, but he strenuously contends that under the decision of the Supreme Court in the "Alabama Midland Case," competition which "*affects rates*" is a conclusive ground of exemption from the restraints of sections 3 and 4 of the law.

The Supreme Court, however, does not hold that competition which "affects rates" is *ispo facto* a conclusive defense, and such a construction of its opinion does violence to the language of the court.

The language of the Supreme Court in the "Alabama Midland Case" is that "competition which affects rates is *one* of the matters to be *considered*" (168 U. S., 166); and again, that "competition between rival routes is *one* of the matters which *may* be lawfully *considered* in making rates, and a substantial dissimilarity of circumstances and conditions *may justify* common carriers in charging greater compensation for a shorter than a longer distance over the same line." (168 U. S., 170.)

To hold that a matter may be "*considered*" in the determination of a question is an altogether different thing from holding that it shall conclusively settle that question. To hold that a matter "*may justify*" is a wholly different thing from holding that it *does justify*.

The language of this court, that "competition which affects rates is *one* of the matters to be considered," *ex vi termini* implies that there are others.

OTHER MATTERS TO BE CONSIDERED.

Among other matters to be considered are the questions:

(1) Whether the discrimination practiced is not greater than is warranted by the dissimilarity of conditions resulting from competition; in other words, whether the discrimination practiced is not *excessive*.

(2) Why the force of competition at the locality favored by the discrimination is more controlling than at the locality discriminated against—whether this is the result of the *normal* action of the competitive forces at the two localities, or has been brought about by concert or *agreement* between the carriers.

(3) Whether the "*interests of the public*," as well as of the carrier, will be subserved by the discrimination.

CHAPTER VIII.

FIRST ANSWER TO PLEA OF COMPETITION.

RATES TO SHORTER-DISTANCE POINTS EXCESSIVE.

THE RATES IN QUESTION IN THESE CASES.

Our first proposition is that the rates in question to the shorter-distance points are in themselves excessive or unreasonably high, and that competition can not justify rates in themselves excessive.

It is conceded by counsel for the carriers that competition can not justify rates excessive or otherwise unreasonable in themselves, and, as before stated, it is expressly held by this court in *L. & N. R. R. Co.* v. *Behlmer* (175 U. S., 649) that—

"While the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by *the absolute command of the statute that all rates shall be just and reasonable.*"

As showing the excessiveness of the rates to the shorter-distance points, attention is called, in the first place, to the rates themselves to the shorter and longer distance points, and to *the excess of the former over the latter.*

RATES IN CASE NO. 70.

The rates in question in Case No. 70 from New York and other Eastern cities to the shorter-distance points, Newnan, Grantville, Hogansville, Lagrange, and West Point, and to the longer-distance point, Opelika, and also to Atlanta, are shown, in cents per hundred pounds, in the table below:

Rates, in cents per 100 pounds, Case No. 752.

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	H	F
Newnan	131	111	98	83	69	56	....	....	....	....	....	78	....
Grantville	147	128	114	97	80	64	....	....	....	....	....	94	....
Hogansville	151	131	116	100	81	65	....	....	....	....	....	97	....
Lagrange	154	135	118	102	82	66	....	....	....	....	....	99	....
West Point	142	124	110	93	77	62	....	....	....	....	....	88	....
Opelika	114	98	86	73	60	49	36	48	40	39	58	68	78
Atlanta	114	98	86	73	60	49	36	48	40	39	58	68	78

The rates on all the classes, it will be observed, are materially lower to Opelika than to the shorter-distance points named between Opelika and Atlanta. For brevity's sake, the attention of the court is called to the disparity in the rates only on first-class goods. Those rates in 1892 (when the order of the Commission was made) were and are now as follows, in cents per hundred pounds:

To Newnan	131	To Opelika	114
To Grantville	147		
To Hogansville	151		
To Lagrange	154		
To Westpoint	142		

Excess of class 1 rates to intermediate points over Opelika rate, in cents per 100 pounds.

	Cents.
To Newnan	17
To Grantville	33
To Hogansville	37
To Lagrange	40
To Westpoint	28

Excess of length of haul to Opelika over hauls to intermediate points.

	Miles.
Newnan	70
Grantville	58
Hogansville	51
Lagrange	38
Westpoint	22

The minimum carload weight under the Southern freight classification, which applies to the traffic involved in these cases, is 24,000 pounds, and the excess of the rates to Newnan, Grantville, Hogansville, Lagrange, and Westpoint, over the rate to Opelika per minimum carload on the six numbered classes (in which, according to the testimony, the traffic involved is embraced), is as follows:

Excess of minimum carload rate to Newnan, etc., over that rate to Opelika.

	1	2	3	4	5	6
Newnan	$40.80	$31.20	$28.80	$24.00	$21.60	$16.80
Grantville	79.20	67.20	62.40	50.40	45.60	33.60
Hogansville	86.40	79.20	72.00	60.00	50.40	36.00
Lagrange	96.00	86.40	76.80	69.60	52.80	44.80
Westpoint	67.20	62.40	57.60	48.00	40.80	31.20

RATES IN CASE NO. 68.

The rates complained of from New York and other Eastern cities to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and for the

haul through those intermediate points to Atlanta, were in 1892, when the order of the Commission was made, and are now, as shown below:

Rates in cents per 100 pounds, Case No. 751.

	Classes.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
Greensboro	137	118	102	87	69	54	45	59	42½	41	65	83	82½
Madison	143	123	107	89	71	56	47	61	43	42	67	85	84
Social Circle	144	125	109	90	72	57	48	61	43½	42½	68	86	85
Covington	141	122	108	93	76	61	48	60	48	46½	74	88	91
Conyers	138	119	105	90	74	60	47	59	47½	46	72	85	93
Stone Mountain	132	114	101	85	71	58	45	57	46	44½	69	80	90½
Atlanta	114	98	86	73	60	49	36	48	40	39	58	68	78
Augusta	96	81	70	58	47	37	28	42	31½	31	43	54	61

The above rates, it will be seen, are materially lower on all classes to Atlanta than to the shorter distance points indicated between Augusta and Atlanta. For brevity's sake, however, attention is called only to the disparity in these rates on *first-class* goods. Those rates were in 1892, and are now, as follows, in cents per hundred pounds:

To Greensboro	137	Atlanta 114
To Madison	143	
To Social Circle	144	
To Covington	141	
To Conyers	138	
To Stone Mountain	132	

Excess of class 1 rates to intermediate points over Atlanta rate, in cents, per 100 pounds.

	Cents.
To Greensboro	23
To Madison	29
To Social Circle	30
To Covington	27
To Conyers	24
To Stone Mountain	18

Excess of length of haul to Atlanta over hauls to intermediate points.

	Miles.
Greensboro	88
Madison	68
Cocial Circle	52
Covington	41
Conyers	31
Stone Mountain	17

Excess of minimum carload rates to Greensboro, etc., over those to Atlanta.

	1	2	3	4	5	6
Greensboro	$55.20	$48.00	$38.40	$33.60	$21.60	$12.00
Madison	72.00	60.00	50.40	38.40	26.40	16.80
Social Circle	72.00	64.80	55.20	40.80	28.80	19.20
Covington	64.80	57.60	52.80	43.20	31.20	21.60
Conyers	57.60	50.40	45.60	40.80	33.60	24.00
Stone Mountain	43.20	38.40	36.00	28.80	26.40	21.60

RATES IN CASE NO. 69.

The rates complained of in Case No. 69, from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, the shorter-distance points, and Atlanta, the longer-distance point, were in 1892,

when the order of the Commission was made, and are now as follows:

Rates, in cents, per 100 pounds.

	Classes.											
	1	2	3	4	5	6	A	B	C	D	E	H	F
Calhoun	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	127	109	96	79	65	50	38	45	35	30	56	65	62
Atlanta	107	92	81	68	56	46	28	35	28	24	48	53	48

The above rates are materially lower on *all* classes to Atlanta than to the shorter-distance points intermediate between Chattanooga and Atlanta. Attention is called to the disparity in the rates on *first-class* goods as illustrating the extent of the discrimination practiced. Those rates were in 1892 and are now as follows, in cents, per hundred pounds:

To Calhoun	109	To Atlanta 107
To Adairsville	112	
To Kingston	115	
To Cartersville	118	
To Acworth	124	
To Marietta	127	

Excess of class 1 rates to intermediate points over Atlanta, in cents, per 100 pounds.

	Cents.
To Calhoun	2
To Adairsville	5
To Kingston	8
To Cartersville	11
To Acworth	17
To Marietta	20

Excess of length of haul to Atlanta over hauls to intermediate points.

	Miles.
Calhoun	78
Adairsville	69
Kingston	59
Cartersville	48
Acworth	35
Marietta	21

Excess of minimum carload rates to Calhoun, etc., over that rate to Atlanta.

	1	2	3	4	5	6
Calhoun	$4.80	$7.20	$7.20	$7.20	$7.20	.....
Adairsville	12.00	14.40	12.00	12.00	9.60	.....
Kingston	19.20	21.60	16.80	16.80	12.00	.....
Cartersville	26.40	26.40	21.60	19.20	14.40	$2.40
Acworth	40.80	36.00	31.20	24.00	19.20	7.20
Marietta	48.00	40.80	36.00	26.40	21.60	9.60

It will be observed that we have given the excess of the rates to shorter-distance points on *minimum* carloads of 24,000 pounds. *The excess on a larger carload, or average carload, will be much greater.*

Chapter IX.

EXCESSIVENESS OF RATES TO SHORTER DISTANCE POINTS, CONTINUED.

FACTS AND GROUNDS UPON WHICH THE CLAIM OF EXCESSIVENESS IS BASED.

ERROR OF CIRCUIT COURT OF APPEALS IN HOLDING THAT THERE WAS NO EVIDENCE OR FACTS "TENDING TO SHOW" UNREASONABLENESS OR EXCESSIVENESS OF RATES TO SHORTER DISTANCE POINTS.

The circuit court of appeals held, in its opinion in these cases, that—

"The most careful consideration of the testimony brought up in the records in these causes does not disclose any evidence that was offered by the appellant" (Commission) "in the circuit court *tending to show* that the rates, separately considered, to the respective points are not reasonable and just."

(Record in case No. 69, bottom p. 272 and top p. 273; eleventh assignment of error.)

Among other facts which appear in the records in these cases "*tending to show*" the excessiveness of the rates, "separately" or in themselves, to the shorter distance points, respectively, it is sufficient to mention that, on cross-examination, witnesses for the carriers

testified that the rates to the longer distance points yielded the carriers a "*reasonable*" remuneration in excess of the cost of the service for the longer hauls to those points; from which the legitimate *prima facie* presumption is that the materially higher rates to the shorter distance points were excessive. (See testimony in Chapter X, *infra.*)

Also, the further fact that tables were introduced in evidence in the circuit court showing that the rates per ton per mile under the rates to the shorter distance points *were many times higher* than the average receipts per ton per mile, and the estimated cost of carrying 1 ton 1 mile on traffic in general, on the roads of the principal defendants and on roads generally throughout the United States. (See testimony in Chapter XV, *infra.*)

These two facts and many others disclosed by the record at least "*tended to show*" the excessiveness of the rates to the shorter-distance points.

SUMMARY OF GROUNDS UPON WHICH IT WAS CONTENDED IN THE COURTS BELOW, AND IS NOW CLAIMED IN THIS COURT, THAT THE RATES TO THE SHORTER DISTANCE POINTS ARE EXCESSIVE.

First. Materially lower rates are and have been for a long series of years charged to the longer distance points.

Second. These materially lower rates to the longer distance points must be *presumed* to be reasonably remunerative to the carrier.

Third. These materially lower rates to the longer-distance points are *proven* by positive testimony of railroad officials to be reasonably remunerative to the carriers.

Fourth. The rates to the longer distance points are *proven* to have been established by *agreement*, and must, therefore, be presumed to be reasonably remunerative to the carrier.

Fifth. The rates per ton per mile yielded by the rates to the shorter distance points are many times higher than the average receipts per ton per mile and estimated cost of carrying one ton one mile on traffic in general on the roads of the principal defendants and on roads generally throughout the United States.

Sixth. The hauls to the shorter distance points are through hauls, but the rates are *combination of through and local rates.*

These and germane propositions will be discussed at length in subsequent chapters of this argument.

Chapter X.

EXCESSIVENESS OF RATES TO SHORTER DISTANCE POINTS, CONTINUED.

EXCESSIVENESS INFERRED FROM FACT THAT MATERIALLY LOWER RATES ARE CHARGED, AND HAVE BEEN CHARGED FOR A LONG SERIES OF YEARS, TO THE LONGER DISTANCE POINTS, AND THOSE LOWER RATES ARE PRESUMPTIVELY REASONABLY REMUNERATIVE FOR THE LONGER HAULS.

THE LOWER RATES FOR THE LONGER HAULS ARE ALSO PROVEN BY TESTIMONY OF RAILROAD OFFICIALS TO BE REASONABLY REMUMERATIVE FOR THOSE HAULS.

(*a*) The excessiveness in themselves of the rates to the shorter distance points may, in the *first place*, be *inferred* from the great disparity between those rates and the rates to the longer distance points.

It would appear, presumptively at least, that the rates to the shorter distance points are unreasonably high in themselves, because traffic is (and *has been for a long series of years*) carried through those points and a *materially* longer distance on to the longer distance points at *materially* lower rates.

In the *Chattanooga Case* (85 Fed. Rep., 114), Judge Severens says on this point:

"The charges accepted for the longer haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul. *Such comparisons are applied to every other kind of business*, and the fact that there may be competition in such business would not be a controlling consideration, for the presumption would always be that the compensation charged for the service or thing is sufficient to be reasonable."

The *prima facie* presumption is that the materially lower rates for the materially longer hauls to Opelika and Atlanta yield the carrier a reasonable remuneration over and above the expense of carriage to those points.

This presumption rests upon the same principle or belongs to the same class of presumptions as the presumption of *sanity*. An individual who would render services for a sum not reasonably remunerative—and that, too, not "incidentally, but for a long series of years"—would be held to be an incompetent business man, if not *non compos mentis*. There is no reason why the same rule should not be applied to carriers.

If, as we are bound to presume, the materially lower rates for the materially longer hauls to Opelika and Atlanta yield the carriers a reasonable remuneration in excess of the cost of service, then the *same* rates to the shorter distance points would yield a remuneration

in excess of such reasonable remuneration, and rates to the shorter distance points which are *materially higher* than rates to Opelika and Atlanta would yield a still greater remuneration in excess of such reasonable remuneration, and are presumptively excessive.

If, on the other hand, as all the witnesses for the carriers testify, the rates to the shorter distance points yield only a reasonable compensation in excess of the cost of the service of transportation to those points, and are not excessive, then the lower rates to Opelika and Atlanta yield not only nothing for the additional hauls to those points, but *less than nothing.*

In the *Chattanooga Case* (85 Fed. Rep., 115), Judge Severens says:

"If the through rates (for the longer haul through Chattanooga) to Nashville afford a fair profit to the carriers, there is substantial ground for contending that the *same charge* for carrying freight from the East to Chattanooga would afford a reasonable profit and would therefore be a reasonable charge."

(*b*) *That the materially lower rates for the materially longer hauls to Opelika and Atlanta are reasonably remunerative, not left to presumption; positive proof to that effect.*

We are not left to *presume*, however, that the materially lower rates for the materially longer hauls to

Opelika and Atlanta yield the carriers a reasonable remuneration over and above the expense of carriage. We have the positive testimony of railroad officials, witnesses for the defendants, that the rates to Opelika and to Atlanta are reasonable *in themselves* and yield the carriers a reasonable compensation over and above the cost of carriage.

Y. Van den Berg, traffic manager of the Louisville and Nashville Railroad Company, who has been connected with the freight-traffic business of the United States since 1880, testifies as follows on cross examination:

"Cross-question 34. Are the rates from New York and other Northeastern cities to Opelika reasonable *in and of themselves*, considered solely from the standpoint of the carrier? That is, do they pay the cost of service of carriage and yield the carrier a *reasonable* compensation over and above that cost?"

"Answer. *I think they do.*"

(Testimony of Y. Van den Berg, Record, in Case 70, p. 87.)

George R. Knox, general freight agent of the Nashville, Chattanooga and St. Louis Railway, testifies as follows on cross-examination:

"Cross-question 17. Are the lower rates from New York and other Northeastern cities for the longer hauls through those intermediate points (Newnan, Grantville, Hogansville, Lagrange, and West Point) to Opelika *just and reasonable in and of themselves?*"

"Answer. I think so."

"Cross-question 20. Is a rate in your opinion reasonable which does not yield a carrier a *proper* remuneration over and above the cost of the service of carriage?"

"Answer. No; I do not think it is."

(See testimony of G. R. Knox, Record in Case 70, p. 129.)

G. P. Biles, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company, testifies as follows on cross-examination:

"Cross-question 17. You have testified that in your opinion the rates from New York and other Eastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point, are just and reasonable *in and of themselves*. Is it also your opinion that the lower rates for the longer haul through those points to Opelika are just and reasonable *in and of themselves?*"

"Answer. I think so."

"Cross-question 20. Is a rate in your opinion reasonable *in and of itself* which does not yield the carrier a *proper* remuneration over and above the cost of the service of carriage?"

"Answer. I should say not."

(See testimony of G. P. Biles, Record in Case 70, p. 147.)

R. E. Lutz, freight-traffic manager of the Atlanta and West Point Railroad and the Western Railway of Alabama, on cross-examination, testified as follows:

"Cross-question 29. You stated in your direct examination that the rates over the line involved in this case from New York and other Northeastern cities to Newnan, Grantville, Hogansville, Lagrange, and West Point were just and reasonable. Is that your opinion

also as to the rate from New York and other Northeastern cities for the longer haul through those intermediate points to Opelika?"

"Answer. Yes, sir."

"Cross-question 31. Is a rate reasonable *in and of itself* which does not yield the carrier a *proper* remuneration over and above the cost of the service of carriage?"

"Answer. No; I would not consider it a reasonable rate if it did not yield the carrier *sufficient revenue* over and above cost of transportation."

(Testimony of R. E. Lutz, Record in Case 70, p. 121.)

To the same effect is the testimony of witnesses in relation to the rates from Cincinnati and from New York and other Northeastern cities to Atlanta.

Chapter XI.

MEANING OF WORDS "REASONABLE COMPENSATION ABOVE COST OF SERVICE," RATES "REASONABLE IN AND OF THEMSELVES," "PROPER REMUNERATION OVER AND ABOVE THE COST OF SERVICE," "SUFFICIENT REVENUE OVER AND ABOVE THE COST OF SERVICE," USED IN TESTIMONY OF WITNESSES FOR ROADS SET FORTH IN PRECEDING CHAPTER.

(*a*) It will be observed, as set forth in the preceding Chapter X, of this argument, that the witness Van den Berg testifies that the rates to the *longer* distance points yield "a *reasonable compensation* over and above the cost of service of carriage;" that the witness George R. Knox testifies that the rates to the shorter distance points are "*just and reasonable in and of themselves*," and that a rate is not reasonable which does not yield the carrier "a *proper remuneration* over and above the cost of service of carriage;" that the witness G. P. Biles testifies that those rates are "*just and reasonable in and of themselves*;" and that a rate is not reasonable "*in and of itself*" which does not yield the carrier "a *proper remuneration* over and above the cost of service of carriage;" that the witness R. E. Lutz testifies that those rates are "*just*

and reasonable," and that a rate is not "*reasonable in and of itself*" which does not yield the carrier "SUFFICIENT REVENUE over and above the cost of transportation;" and that the witness Joseph M. Brown testifies that those rates are reasonable "*in and of themselves*," and that a rate is not reasonable "in and of itself" which does not yield the carrier "a *proper remuneration* over and above the cost of service of carriage."

Counsel for carriers insists that these witnesses did not take fixed charges into account. *This is pure assumption.*

He calls attention to the fact that there are cost of movement (equivalent to cost of service) and fixed charges, and from that fact draws the inference that the witnesses did not include fixed charges. This is a clear case of *non sequitur.*

At the hearing in the circuit court it was suggested by the court that inasmuch as counsel differed as to the meaning of the language of these witnesses that the court would like to have submitted additional proof on this subject, or words to that effect. The language being unambiguous and the witnesses being defendants' witnesses, it did not devolve upon counsel for the Commission to act upon this suggestion.

Counsel for the carriers, upon whom it did devolve to show that the language of his own witnesses had a different meaning from what it naturally imports, did not act upon this suggestion of the court.

The *natural* meaning of this language is plain, and *we stand upon that.*

How can a rate be said to yield a "*sufficient* revenue over and above the cost of transportation" unless it yields "sufficient revenue" (testimony of R. E. Lutz) to pay fixed charges as well as dividends?

How can a rate be said to be reasonable "*in and of itself*" unless it yields revenue over and above the cost of service of carriage sufficient to meet fixed charges and dividends both?

How can rates be said to yield a "*reasonable* or *proper remuneration*" over the cost of the service of carriage unless that remuneration is sufficient to meet dividends and fixed charges both?

How can a rate be said to yield a "*reasonable compensation*" over and above the cost of service of carriage unless that compensation is sufficient to meet both fixed charges and dividends?

Rates which do not yield sufficient revenue in excess of the cost of service to meet both fixed charges and

proper dividends can not be said to be either "*reasonable in and of themselves*" or to yield a "*proper remuneration*" over and above the cost of the service of carriage, or to yield "*a reasonable compensation*" over and above that cost, or to yield "*sufficient revenue*" over and above that cost.

Such rates would be *unreasonably low* "in and of themselves," and would not yield sufficient revenue over and above the cost of service of transportation.

How can rates be said to be *remunerative* or *compensatory* in any sense which do not pay fixed charges as well as reasonable dividends?

But counsel for the carriers contends that this testimony of his own *expert* witnesses did not take into account fixed charges. He might as well contend that it did not take into account *reasonable dividends, because his witnesses made no mention of dividends.*

This seems to be an afterthought with counsel for the roads. The testimony was brought out on *cross-examination* by counsel for the commissioner. If the witnesses did not take fixed charges into account, why did not counsel for the carriers make this appear *by redirect examination of his witnesses?*

The idea that such a construction could be put upon the language of the witnesses for the roads never en-

tered the mind of counsel for the commission, and when he propounded the cross-questions which brought forth this testimony he meant by the words "reasonable or proper remuneration" a remuneration which would meet both fixed charges and reasonable dividends.

We stand upon the *natural* and *obvious* meaning of the language of witnesses for the carriers. If that language has a *technical* meaning when applied to railroad rates, which it does not have in ordinary use, then *the burden was upon the defendants to make that fact appear.*

It is also to be noted that the words "in and of themselves," when applied to reasonableness of rates, exclude the idea that the rates have been made lower than they otherwise should be by *competition* or anything else.

Chapter XII.

THE OTHER HORN OF THE DILEMMA.

IF RATES TO LONGER DISTANCE POINTS ARE NOT REASONABLY REMUNERATIVE, THEN PART OF THE BURDEN WHICH SHOULD BE BORNE BY THE TRAFFIC TO THOSE POINTS IS TAXED UPON TRAFFIC TO SHORTER DISTANCE POINTS.

Counsel for the carriers admitted at the hearing in the court below that if his witnesses meant that the rates in question to the longer distance points yield a reasonable remuneration in excess both of the cost of service and fixed charges, the position of counsel for the Commission was sustained. *His contention, then, is that those rates do not yield compensation in excess of the cost of service sufficient to meet fixed charges and reasonable dividends.* If that be so, then the rates to the longer distance points are *unreasonably low*, and the burden of paying fixed charges which should be borne proportionately by the traffic to the longer distance points or an undue proportion of that burden is placed on traffic to the shorter distance points. I quote below

what is said by Judge Severens in the "Chattanooga case" on this subject:

"If carriers engage in a competitive struggle for business at a place where they meet and underbid each other to a point which is not in itself remunerative, they can not turn back on the line, and taking advantage of the conditions existing at other localities arising either from the fact that there is no opportunity for competition or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack of profits in the competitive business. Such a course can not be sanctioned without 'tearing up by the roots' the whole scheme of the commerce act."

We contend that competition can justify neither unreasonably high rates to noncompetitive points nor unreasonably low rates to competitive points, *the latter rates resulting in a deficiency which must be taxed upon traffic to noncompetitive points.*

The principle underlying this proposition is sustained by this court in *Smythe* v. *Ames*, known as the "Nebraska maximum rate case," reported in 169 U. S., page 541.

In that case the appellee contended that the inadequacy of the local or domestic rates in question was made up by the rates on interstate traffic, and that this

justified the inadequacy of the domestic or local rates. On this point this court says:

"If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect to its entire line and all its business, interstate and domestic. We can not concur in this view. In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier or to the profits derived by it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. *Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business.* So far as rates of transportation are concerned, *domestic business should not be made to bear the losses on interstate business, nor the latter the losses of domestic business.*" (169 U. S., 541.)

THE TWO HORNS OF THE DILEMMA.

There is presented to counsel for the carriers *the two horns of a dilemma.* If rates to the longer-distance points do not yield a compensation in excess of the cost of service of transportation sufficient to pay their proper proportion of both fixed charges and reasonable

dividends, and are, therefore, unreasonably low, and the rates to the shorter-distance points are reasonably high, then that in itself constitutes an unjust preference in favor of the longer-distance points. If, on the other hand, the lower rates to the longer-distance points yield a remuneration in excess of the cost of service sufficient to meet their proper proportion of both fixed charges and reasonable dividends, then the higher rates for the materially shorter hauls to the shorter-distance points are excessive.

Chapter XIII.

COST OF SERVICE AN ELEMENT TO BE CONSIDERED IN DETERMINING REASONABLENESS OF RATES—DISTANCE ADDS TO THE COST OF SERVICE, AND ALSO TO THE FIXED CHARGES—COST OF SERVICE TO SHORTER DISTANCE POINTS LESS THAN TO OPELIKA OR ATLANTA ON ACCOUNT OF LONGER HAULS TO LATTER POINTS.

The propositions would seem to be self-evident, (1) that the cost of service is an element to be considered in determining the reasonableness of rates; (2) that the cost of service depends largely, if not principally, on distance or the length of the haul; (3) that the distance to Opelika or Atlanta being materially greater than to the shorter distance points the cost of the service of transportation to Opelika or Atlanta must be greater than to the shorter distance points, and (4) that rates to the shorter distance points must be excessive which are materially higher than rates which pay a *proper* remuneration in excess of the cost of service for the longer hauls through those points to Opelika or Atlanta.

The first three of these propositions were admitted by most, if not all, the railroad officials examined in behalf of the defendants, and also the proposition that

the greater the length of a road the greater would be the cost of its construction, and hence the greater the amount of what are known as "fixed charges," such as interest on capital invested, taxes, etc.

All these witnesses admit that, other things being equal, the consumption of time is greater the greater the length of the haul;

That, other things being equal, the consumption of fuel is greater the greater the length of the haul;

That, other things being equal, the wear and tear on locomotives, cars, track, roadbed, etc., is greater the greater the length of the haul;

That, other things being equal, the cost of keeping a road in repair is greater the greater the length of the road;

That, other things being equal, it requires more locomotives and cars and more crews for the running of trains on a long road than on a short one;

That, other things being equal, distance adds to the cost of building roads, and therefore the fixed charges, such as interest on capital invested, taxes, etc., are greater the greater the length of the road; and

That the value of the service to the shipper, as a general rule, is greater the greater the length of the haul.

It is thus seen that not only the expense of the actual service of transportation, but also the fixed charges, such as interest on investment, etc., are directly dependent on distance. These expenses and charges are necessarily first to be determined in making a reasonable rate. Distance, therefore, is the most important and controlling element in rate making.

This fact is universally recognized and constantly acted upon by all carriers. When rates are divided between carriers composing a through line, the proportion of each carrier is determined by mileage, and you can not find a tariff of rates which does not, as an almost invariable rule, provide higher charges as the length of the haul increases from station to station.

IMPORTANCE OF DISTANCE AS A FACTOR IN RATE-MAKING RECOGNIZED BY CONGRESS.

By forbidding in section 4 of the law the greater charge for the shorter than the longer DISTANCE, Congress recognizes and emphasizes the importance of *distance* as a factor in rate-making.

Chapter XIV.

THE RATES TO THE LONGER DISTANCE POINTS NOT FIXED BY COMPETITION BUT BY AGREEMENT BETWEEN THE CARRIERS.

WHERE RATES ARE ESTABLISHED BY AGREEMENT BETWEEN DIFFERENT LINES OF CARRIERS THEY WILL BE REASONABLY HIGH. (171 U. S., 505.)

THE VERY OBJECT OF THE AGREEMENT IS TO GET RID OF LOW RATES BROUGHT ABOUT BY COMPETITION AND ESTABLISH AND MAINTAIN REASONABLE RATES.

WHEN RATES TO COMPETITIVE POINTS ARE REASONABLY HIGH, WHETHER LEFT SO BY COMPETITION OR MADE SO BY AGREEMENT, THERE IS NO JUSTIFICATION FOR HIGHER RATES TO SHORTER DISTANCE POINTS.

THE GROUND UPON WHICH THE RIGHT TO CHARGE HIGHER RATES TO SHORTER DISTANCE POINTS IS BASED IS THAT COMPETITION HAS FORCED CARRIERS TO CHARGE UNREASONABLY LOW RATES TO THE LONGER-DISTANCE POINTS.

TRUE INWARDNESS OF THE SITUATION.

The fact is conceded and also established by the proof in these cases, that the *same rates* are charged and

maintained by all the alleged competing lines to the longer distance points, and that these rates were originally FIXED BY AGREEMENT between the carriers composing those lines as members of the Southern Railway and Steamship Association.

Testimony of Y. Van den Berg, cross-questions 34-37, record in case 69, p. 118.

Testimony of Y. Van den Berg, cross-questions 57-59, record in case 70, p. 89.

Testimony of Y. Van den Berg, cross-questions 43-45, record in case 68, p. 70.

(The testimony of all the other railroad officials in the three cases on this point is to the same effect.)

RATES FIXED BY AGREEMENT HIGHER THAN RATES THE PRODUCT OF COMPETITION.

It is well settled that where *previously competing* carriers come together and agree upon the rates to be charged by them between certain termini, those rates will be higher than rates which are the result of active competition. This proposition is one of the bases of the decision of this court in the *Joint Traffic Association Case*. (171 U. S., 505.)

In that case, in speaking of the agreement in the *Trans-Missouri Case* (166 U. S., 209) and of the agreement in the *Joint Traffic Association Case* this court says:

"The natural and direct effect of the two agreements is the same, viz, *to maintain rates at a higher level than would otherwise prevail.*" (171 U. S., 565.)

And again:

"The agreement" (Joint Traffic Association agreement) "*affects interstate commerce by destroying competition and by maintaining rates above what competition might produce.*" (171 U. S., 569.)

And again, the court speaks of the Joint Traffic Association agreement as one made—

"For the purpose of stifling competition among themselves" (the competing lines), "and of thus keeping their rates and charges higher *than they might otherwise be under the laws of competition.*" (171 U. S., 571.)

The agreement fixing rates in these cases was brought about by the injurious effects of unhealthy competition, but the rates themselves, established by that agreement are not the product of competition—per contra, they are the product of an agreement, the object of which was to do away with competition.

Witnesses for the carriers in testifying that the rates, although established by agreement, are the result of competition, *fail to distinguish between the agreement and the rates established by it.* The agreement is the result of competition, but the rates are the result of the agreement to do away with competition, and hence are not the product of competition.

As stated above, the agreement fixing rates in these cases was between the carriers as members of the Southern Railway and Steamship Association. J. M. Culp, traffic manager of the Southern Railway, and a witness for the carriers in all these cases, testified that this association "*was formed as a means of preventing the roads from destroying each other by competition.*" The following is an extract from his testimony on this point:

"Cross-question 50. Did not competition cause the roads to form the association" (Southern Railway and Steamship Association)?

"Answer. *The association was formed as a means of preventing the roads destroying each other by competition.*"

(Record in case 70, p. 75.)

CONTENTION OF COUNSEL FOR CARRIERS BEFORE COURT BELOW.

Counsel for carriers in his oral argument before the court below drew upon his "*inner consciousness*"—there being no testimony to sustain his statement—and told the court that when traffic managers come together to agree upon rates they practically enter into competition, although their object in coming together is to get rid of competition, and that they underbid each other and the lowest rate will be adopted. This is contrary to reason and common sense.

The very object for which they come together is the establishment of rates *reasonably high* to take the place of *rates unreasonably low*, brought about by competition.

When they so come together to establish reasonably high rates *there is nothing to prevent their doing so.*

They can have no motive for underbidding each other, as counsel for the carriers alleges they would naturally do. THIS IS APPARENT FROM THE FACT THAT WHEN THE RATES BY ALL THE COMPETING LINES ARE MADE *the same* BY AGREEMENT, EACH LINE WILL GET AS LARGE A PROPORTION OF THE ENTIRE TRAFFIC TRANSPORTED UNDER THE RATES, WHETHER THEY BE HIGH OR LOW. THERE IS, THEREFORE, NO MOTIVE FOR UNDERBIDDING. THE MOTIVE IS THE OTHER WAY.

According to the "inner consciousness" of counsel for the carriers, they will, when they come together to agree upon rates reasonably high, from force of habit enter into competition by endeavoring to underbid each other—*and this, too, when there can be no motive for so doing, and when underbidding will defeat the object of their meeting.*

This view of counsel for carriers places traffic managers in a very unenviable light. If it be true, their

conduct is wholly devoid of reason and common sense, and they are utterly incompetent to transact the business committed to their hands.

ADMISSION BY COUNSEL FOR THE CARRIERS.

Counsel for the carriers virtually admits the correctness of our views, as follows:

"As held by the Supreme Court, the object of traffic association agreements was to restrain within *reasonable limits* the ruinous competition which existed at longer-distance points.

"The very fact that such agreements were made is the best evidence that competition existed at the longer-distance points, and as the object of such agreements was to restrict that competition and *thereby increase the longer-distance rates.*" * * *

(Bottom p. 118, printed argument of counsel for carriers in court below.)

It will be observed that counsel for the carriers admits that the object of such agreements is "to restrain within *reasonable limits* the ruinous competition which existed at the longer-distance points." *How can the agreement restrain the competition within "reasonable limits" unless the agreement resulted in rates reasonably high?* He also admits that the result of the agreement is to "*increase*" the longer-distance rates.

The long maintenance of these rates shows they are not affected by competition.

The proof is that the rates now in force to the longer distance points have been in force for a long period of time, *fifteen years or more.*

This fact shows that they are *maintained by agreement*, and are not subject to the reductions or fluctuations which would result if competition had free play. Where rates are subject to competition they will naturally fluctuate.

When rates to competitive points are reasonably high, whether left so by competition or made so by agreement, there is no justification for higher rates to shorter distance points.

The ground upon which the right to charge higher rates to shorter distance points is based, is that competition has forced the carriers to charge unreasonably low rates, or rates lower than they might otherwise charge, to the longer distance points.

Competition, the only effect of which is to hold rates down to a reasonable level, can not be invoked in justification of higher rates to shorter distance points. Such competition has only left the rates such as the law requires them to be, and in contemplation of law does not warrant discrimination.

TRUE INWARDNESS OF THE SITUATION.

The fact appears to be that at competitive points reached by two or more lines of transportation, the

carriers, in order to avoid rate wars resulting in unreasonably low rates, are forced to come together and by agreement establish rates reasonably high.

Per contra, at the shorter-distance points reached by only one road, the carriers are under no such compulsion to charge reasonable rates.

At these points, therefore, they are at liberty to charge *all the traffic will bear*. Hence all their witnesses testified that the rates to the shorter-distance points are reasonable, *because traffic "moves" under those rates to those points*. They all testified that a rate is, in their opinion, reasonable *under which the traffic will "move."* (See testimony set forth in chapter infra.)

This is equivalent to saying that any rate is reasonable which is not *prohibitory*. A rate under which traffic will not move is prohibitory and "kills the goose that lays the golden egg."

There is a wide margin, manifestly, between a prohibitory rate and a reasonable rate. For example, *traffic may be worth, say, $100. The rate charged may be $90. In order to secure the $10 difference between the rate and the market value of the traffic the shipper will ship under the $90 rate, although a reasonable rate might be only $50, or less.*

The alternative presented to the shipper is *something or nothing*, "*a half loaf or no loaf at all.*" Therefore the traffic will move under excessive rates.

The whole situation, in a nut shell, then, is, that at the basing or competitive points carriers are compelled to charge reasonable and not excessive rates, and at the shorter-distance points reached by only one road they are under no such compulsion, and charge all that the traffic will bear, or under which it will "move"; in other words, rates which are simply not prohibitory.

Position of circuit court of appeals on this point.

In answer to this the circuit court of appeals says:

"It is argued by counsel for the appellant" (the Commission) "that by this agreement as to the rates the carriers have contracted to not compete. But it is not shown or reasonably suggested on what ground or for what consideration the competing carriers consented to accept the lower rates to these longer-distance points than they charged to the shorter-distance points, for they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points." (Record in case 69, middle p. 272.)

There are many reasons *other than competition* why carriers when they come together to establish rates to these longer-distance competitive points will be restrained or held down to reasonable charges.

These longer-distance competitive points are known as "trade centers," or "basing points;" they are very much larger and more powerful than noncompetitive shorter-distance points *on one road alone*. If all the lines leading to a trade center or basing point should come together and agree upon *excessive* rates, it would result to the injury of the roads in diverting traffic from that trade center or in the building of other roads or other competing lines.

Moreover, the holders of the great financial interests centered in these trade centers have large interests also in the lines of transportation serving them. The presidents, directors, and stockholders of the carriers composing these lines are directly concerned in the prosperity of these trade centers. All these and many other considerations will cause traffic managers when they come together to agree upon rates to these trade centers, *to not transcend the limits of reasonableness.*

The traffic manager of a single road, in fixing rates to a local noncompetitive point on that road reached by no other road, is under no such restraint. Such point is at his mercy and he may charge "all the traffic will bear."

Chapter XV.

EXCESSIVENESS OF SHORTER-DISTANCE RATES, CONTINUED.

EXCESSIVENESS SHOWN BY COMPARISON OF RATES PER TON PER MILE TO SHORTER-DISTANCE POINTS WITH AVERAGE RECEIPTS PER TON PER MILE AND ESTIMATED COST OF CARRYING ONE TON ONE MILE ON TRAFFIC IN GENERAL ON DIFFERENT LINES OF CARRIERS THROUGHOUT THE COUNTRY.

CONFLICTING OPINIONS OF COUNSEL FOR THE CARRIERS AND HIS WITNESSES AS TO THE VALUE OF THIS DATA.

The unreasonable or excessive character of the rates to the shorter-distance points may be inferred, not only from the fact that materially lower rates for the longer hauls through those points to Opelika and Atlanta are reasonable and yield the carriers a *proper* remuneration in excess of the cost of carriage, but it also becomes apparent from a comparison of the rates per ton per mile to the shorter-distance points with the *average receipts per ton per mile* and *estimated cost* of carrying a ton a mile on lines of the defendants and on railroads all over the country.

The rates per ton per mile from New York to the shorter-distance points on the six numbered classes under the rates in question in Case *No. 68* and Case *No. 70*, and also the rates per ton per mile from Cincinnati to the shorter-distance points under the rates in question in Case *No. 69*, and the averages of those rates per ton per mile are shown in the following tables:

CASE No. 70.

Rates per ton per mile from New York.

Classes.	To Newnan.	To Grantville.	To Hogansville.	To Lagrange.	To West Point.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1	4.38	4.82	4.90	4.89	4.40
2	3.70	4.20	4.25	4.29	3.84
3	3.28	3.74	3.76	3.75	3.41
4	2.78	3.18	3.24	3.24	2.88
5	2.31	2.62	2.62	2.60	2.38
6	1.87	2.10	2.11	2.09	1.92

	Cents.
Average to Newnan	3.05
Average to Grantville	3.44
Average to Hogansville	3.48
Average to Lagrange	3.47
Average to West Point	3.13

CASE NO. 68.

Rates per ton per mile from New York.

Classes.	To Greensboro.	To Madison.	To Social Circle.	To Covington.	To Conyers.	To Stone Mountain.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1	5.82	5.83	5.69	5.45	5.23	4.87
2	5.02	5.02	4.94	4.71	4.51	4.20
3	4.34	4.36	4.30	4.17	3.98	3.72
4	3.70	3.63	3.55	3.59	3.41	3.13
5	2.93	2.89	2.82	2.94	2.80	2.61
6	2.29	2.28	2.25	2.35	2.27	2.14

	Cents.
Average to Greensboro	4.01
Average to Madison	4.00
Average to Social Circle	3.92
Average to Covington	3.86
Average to Conyers	3.70
Average to Stone Mountain	3.44

CASE NO. 69.

Rates per ton per mile from Cincinnati.

Classes.	To Calhoun.	To Adairsville.	To Kingston.	To Cartersville.	To Acworth.	To Marietta.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1	5.47	5.50	5.50	5.51	5.62	5.57
2	4.77	4.81	4.83	4.81	4.85	4.79
3	4.22	4.22	4.21	2.20	4.26	4.23
4	3.56	3.58	3.58	3.55	3.53	3.46
5	2.96	2.94	2.91	2.89	2.90	2.86
6	2.21	2.21	2.20	2.19	2.22	2.19

	Cents.
Average to Calhoun	3.86
Average to Adairsville	3.87
Average to Kingston	3.87
Average to Cartersville	3.85
Average to Acworth	3.89
Average to Marietta	3.84

The *average receipts per ton per mile* and the *estimated cost* of carrying 1 ton 1 mile for the year 1892 (when the order of the Commission was made) on roads in different sections of the country (embracing most of the defendants in these cases), reported by these roads to the Interstate Commerce Commission, are shown in the table below:

Name of road.	1892. Average receipts per ton per mile.	1892. Estimated cost of carrying 1 ton 1 mile.
I.	*Cents.*	*Cents.*
1. Louisville and Nashville R. R	0.948	0.621
2. Nashville, Chattanooga and St. Louis Rwy	1.035	.599
3. Cincinnati, New Orleans and Texas Pacific Rwy	.779	.571
II.		
1. Pennsylvania R. R	.647	.448
2. New York, New Haven and Hartford R. R	1.747	1.425
3. Pittsburg, Cincinnati, Chicago and St. Louis Rwy	.706	.551
4. Fitchburg R. R	.925	.712
5. West Shore R. R.[1]		
6. Lake Shore and Michigan Southern Rwy	.602	.416
7. Cleveland, Cincinnati, Chicago and St. Louis Rwy	.710	.481
8. New York, Chicago and St. Louis R. R	.537	.438
9. New York Central and Hudson River R. R	.699	.518
10. Cumberland Valley R. R	1.285	1.058
11. New York, Philadelphia and Norfolk R. R	1.094	.885
III.		
1. East Tennessee, Virginia and Georgia Rwy	.874	.675
2. Norfolk and Western R. R	.545	.362
3. Richmond and Danville R. R	1.355	.929
4. Western and Atlantic R. R.[2]		
5. Central Railroad and Banking Co. of Georgia	1.356	.972
6. Georgia R. R. and Banking Co.[3]		
7. Atlanta and West Point R. R	1.630	.931
8. Southern Rwy		
9. Western Rwy. of Alabama	1.090	1.077

[1] Financial report filed. Operations included in those of New York Central and Hudson River R. R.
[2] No report filed. Operations included in those of Nashville, Chattanooga and St. Louis Rwy.
[3] Financial report filed. Operations included in those of Georgia R. R.

The average receipts per ton per mile and estimated cost of carrying 1 ton 1 mile, as shown in

the preceding table, are on traffic in general. Comparisons will therefore be made of the figures in that table with the averages of the rates per ton per mile to the shorter-distance points on the six numbered classes—that is, on traffic in general.

The highest average receipt per ton per mile, it will be seen, of any road named in the table is that of the New York, New Haven and Hartford road, which is *1.74 cents*.

The averages of the rates per ton per mile, yielded by the rates in question to the shorter-distance points in Case No. 69, to wit, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, range from *3.84 cents* to Marietta to *3.89 cents* to Acworth, more than twice as high as the highest average receipt per ton per mile, namely, *1.74 cents*.

The averages of the rates per ton per mile under the rates in question to the shorter-distance points in Case No. 68, to wit, Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, range from *3.44 cents* to Stone Mountain to *4.01 cents* to Greensboro, more than twice as high as the highest average receipt per ton per mile, *1.74 cents*.

The averages of the rates per ton per mile yielded by the rates in question to the shorter distance points in

Case No. 70, to wit, Newnan, Grantville, Hogansville, Lagrange, and Westpoint, range from *3.05 cents* to Newnan to *3.48 cents* to Hogansville, as against the highest average receipt of *1.74 cents*.

The averages of the rates per ton per mile to the shorter distance points in the three cases are from about *two to six times as large as* the average receipts per ton per mile on all the roads in the table.

The averages of the rates per ton per mile to the shorter distance points are from *three to eight times as large* as the *estimated cost* of carrying 1 ton 1 mile on all of the roads in the table.

Section 20 of the act to regulate commerce requires carriers to make annual reports to the Interstate Commerce Commission, and among other items embraced in those reports are the average receipts per ton per mile on traffic in general, and were up to the year 1894 the estimated cost of carrying 1 ton 1 mile. The figures in the above table, showing average receipts per ton per mile and estimated cost of carrying 1 ton 1 mile, are taken from the reports of the carriers named in that table, which reports were made under the law to the Insterstate Commerce Commission.

Counsel for the carriers, *appreciating the force of these figures*, attempted to show that this data is of no value

in determining whether rates are or are not excessive. For this purpose he asked witnesses for the carriers the following question:

"Can the number of tons carried 1 mile, or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying 1 ton 1 mile, either jointly or separately, be used for the *standard* of railroad rate making?" (See interrogatory 9, p. 69, Record in Case 70.)

The witnesses answered that it could not be used as *such standard*.

They were all, however, cross-examined on this point, and admitted that this data was useful in determining whether all the rates charged were or were not *excessive*. The court is asked to consider a few extracts from the testimony of these witnesses on this point.

J. M. Culp, traffic manager of the Southern Railway, testified as follows:

"Cross-question 25. Is not such data" (average receipts per ton per mile and estimated cost of carrying 1 ton 1 mile on traffic in general) "useful to some extent in determining whether an existing rate is or is not excessive?"

"Answer. It is useful in determining whether *all the rates* are excessive."

(Testimony, Record, pp. 73, 157, Case 70.)

It will be observed that the question in these cases now before the court is whether *all the rates*—that is,

rates on all traffic to the shorter distance points—are excessive.

Y. Van den Berg, traffic manager of the Louisville and Nashville Railroad, testified that the average receipts per ton per mile and the estimated cost of carrying 1 ton 1 mile "*may be a factor in some cases by which to judge of the reasonableness of a rate.*"

(Answer to cross-question 18, Record, p. 68, Case 68.)

T. S. Davant, general freight agent of the Norfolk and Western Railroad Company, testified, in answer to direct question 12:

"The average receipts per ton per mile, or the estimated cost of carrying 1 ton 1 mile, can not be used either singly or together as a *standard* in railroad rate making, for the reasons that the tariff *anticipates* the doing of the business, while these results can only be ascertained *after* the business is done."

(Record, p. 76, Case 68.)

This is equivalent to saying that experience of what have been reasonable rates in the past furnishes no light as to what may be reasonable rates in the future.

This witness, however, on cross-examination, in answer to cross-question 15, "Is not such data valuable to a certain extent in determining the reasonableness of a rate already in existence?" answered, "Measurably; yes, sir." (Record, p. 78, Case 68.)

It is a significant fact that the *carriers have been in the habit of making out for their own use and keeping record of this data long before the act to regulate commerce was passed and up to the present time*, and that the average receipts per ton per mile are easily ascertainable, and both the average receipts and estimated costs are the result of accurate calculation. This appears from the following extracts from the testimony of the witnesses for the carriers brought out on cross-examination:

George R. Knox testified as follows:

"Cross-question 52. Are not the average receipts per ton per mile the result of accurate calculation?"

"Answer. Yes, sir."

"Cross-question 53. Is not the estimated cost of carrying 1 ton 1 mile the result of accurate calculation?"

"Answer. Yes, sir; usually so."

"Cross-question 54. Have not the roads been in the habit of making up and recording this data for a series of years anterior to the year 1880?"

"Answer. I do not know how far back of 1880, but I think some roads did."

(Record, p. 132, Case 70.)

Y. Van den Berg testified as follows:

"Cross-question 19. How long have the roads been in the habit of making out these data—the average receipts per ton per mile and the estimated cost of carrying 1 ton 1 mile?"

"Answer. For as long as I have been connected with the railroads."

"Cross-question 20. You have been connected with them since 1880?"

"Answer. Yes, sir."

"Cross-question 21. What use do the roads make of these data?"

"Answer. It gives them a chance to know what the average rate per ton per mile is that they realize on their entire traffic that may be used for other purposes."

"Cross-question 22. These data are the result of calculation, are they not?"

"Answer. Yes, sir."

(Record, p. 68, Case 68.)

George R. Knox testified as follows:

"Cross-question 45. Have not railroads been in the habit of making out and recording this data as to average receipts per ton per mile and estimated cost of carrying a ton a mile for a long period of time?

"Answer. Yes, sir.

"Cross-question 46. As far back as 1880, and prior to that time?

"Answer. Some roads have, I think, as far back as that.

"Cross-question 47. Are not the average receipts per ton per mile the result of accurate calculation?

"Answer. I think so."

(Record, p. 157, Case 68.)

Counsel for the roads, therefore, in attempting to discredit this data, is confronted by the fact that it has been kept and recorded by the roads for their own use for a period long anterior to the passage of the act to regulate commerce. *The question is, Why have they put themselves to this trouble, and of what use is this data to them?* Unquestionably for the very purpose for which it is being used in these cases, namely, to enable them to see whether their rates are too low or

too high. Their witnesses testified positively that this data is useful in determining whether all the rates are excessive, and is a factor, taken in connection with others, to be considered in determining the reasonableness of rates.

In a brief filed by counsel for carriers in the "Chattanooga Case," he says, speaking of "average receipts per ton per mile" and "estimated cost of carrying 1 ton 1 mile:"

"I used the *same data* to show that certain proportions of through rates to Nashville which are received by certain of the defendant carriers are 'REMUNERATIVE.'"

By the word "remunerative" counsel explained that he meant "*any* remuneration over the additional cost of the movement of that particular traffic."

If this data is useful as showing whether rates yield *any* remuneration above the cost of service, does it not follow that it may also shed light upon the question as to whether or not the remuneration is excessive?

While this data does not indicate with mathematical accuracy what is a reasonable rate, yet the fact that rates yield a rate per ton per mile from two to six times larger than the average receipts per ton per mile on traffic in general on roads all over the country is a circumstance, in connection with others, showing or tending to show that that rate is excessive.

This is a self-evident proposition, and hence not susceptible of further elucidation.

We give below in parallel columns the conflicting opinions on this subject of counsel for the carriers and railroad officials whom he examined as EXPERTS in these cases:

MR. BAXTER'S OPINION.

On page 117 of his printed argument in these cases, filed in the circuit court, counsel for the carrier says:

"The average receipts per ton per mile of a road are of no value *except to show the proportion which the high-class traffic bears to the low-class traffic of a road.*"

OPINIONS OF RAILROAD OFFICIALS.

As seen above, Mr. Culp testifies:

"It" (average receipts per ton per mile and estimated cost of carrying a ton a mile) "is useful in determining whether all the rates are *excessive*. In other words, the average receipts of a road per ton per mile might be so much that taken in connection with other things it might be held that the rates were *excessive*."

As seen above, Y. Van den Burg testified as follows:

Q. "Are they" (average receipts per ton per mile, &c.) "standards in deter-

mining the reasonableness of a rate in a given case?"

A. "They *may be a factor* in some cases to judge it by, but they would not be a standard."

Q. "What use do the roads make of this data?"

A. "It gives them a chance to know what the average *rate* per ton per mile is they realize on their traffic, and may be useful for other purposes."

As seen above, T. S. Davant testified:

Q. "Is not such data of value to a certain extent in determining the reasonableness of a rate already in existence?"

A. "*Measurably;* yes, sir."

As seen above, George P. Biles testified:

Q. "What use do the roads make of this data?"

A. "Well, the idea is, I suppose, to compare one month with the corresponding month of the preceding year, or certain periods of one year with other years,

> to see whether or not *the rate per ton per mile* is going down or going up, and to look into that feature of it and see where the trouble is."

It thus appears that there is a radical difference of opinion between counsel for the carriers and his *expert* witnesses as to what this data is valuable for.

He says it is "*of no value except to show the proportion which the high-class traffic bears to the low-class traffic of a road.*"

His witnesses say it is valuable as showing whether "*all the rates are excessive;*" that it "*may be a factor in some cases to judge the reasonableness of a rate by;*" that it gives the roads a chance "*to know what the average rate per ton per mile is they realize on their traffic;*" and that it is "*measurably*" valuable in determining the reasonableness of a rate already in existence.

As we have seen, counsel for the carriers himself in the *Chattanooga Case* used it to show whether the proportions of through rates received by certain of the defendant carriers were remunerative.

It will be noted that the witnesses Van Den Burg and Biles testified that this data is useful as showing what the average *rate* per ton per mile is.

This data is, therefore, an *index to the rates* charged by the various railways named in the above table. If it be an index to the rates charged by those roads all over the country *embracing the principal defendants*, then the fact that the rates per ton per mile to the shorter distance points involved in these cases are from *2 to 6* times as high as the average receipts, and from *3 to 8* times as high as the estimated cost of carrying 1 ton 1 mile on all those roads, is a circumstance showing or tending to show that the rates to the shorter distance points are excessive.

WHILE RECEIPTS PER TON PER MILE WILL INCREASE AS THE PROPORTION WHICH HIGH-CLASS TRAFFIC BEARS TO LOW-CLASS TRAFFIC INCREASES, THOSE RECEIPTS WILL ALSO INCREASE AS THE RATES INCREASE.

On page 118 of his printed argument in circuit court, counsel for the carriers demonstrates the first half or clause of the above proposition, but makes no mention of the concluding clause.

For this purpose he supposes that the tonnage of a road carried one mile for each of three consecutive years is 2,000,000 tons; that during the first year one-fourth of the tonnage is first class, and carried at 5 cents a ton, and three-fourths Class A, and carried at 1 cent a ton; that the second year, one-half of the tonnage was Class 1, and the other one-half Class A, and carried at

the same rates as above named, respectively; and that the third year, three-fourths of the tonnage was Class 1, and the remaining one-fourth Class A, and carried at the same rates as named above, respectively. Under this state of facts, although the aggregate tonnage and rates remained the same each year, the average receipts per ton per mile would be for the first year 2 cents, for the second year 3 cents, and for the third year 4 cents.

This simply shows that the receipts per ton per mile are subject to variation, as the classes of traffic transported vary.

The fact remains, however, that if the rates on Class 1 traffic for the second year, for instance, were advanced to 7 cents, and to 2 cents on Class A traffic, the average receipts per ton per mile would be increased from 3 cents per ton per mile to 4½ cents. *This demonstrates that the amount of the average receipts per ton per mile is dependent upon the amount of the rate charged, as well as the proportion which high-class traffic bears to low-class traffic. Both are factors.*

If, therefore, as counsel for the roads says, the average receipts per ton per mile are valuable as "showing the proportion which the high-class traffic bears to the low-class traffic," it is equally valuable as showing whether *the rates charged are* HIGH OR LOW.

As heretofore shown, the carriers have from time immemorial made out these data for their own use. If the position of counsel for the carriers be true, *it is wholly valueless*, and they have been stultifying themselves in making it out. If, as counsel for the carriers says, it is only valuable as showing "the proportion which the high-class traffic bears to the low-class traffic," it is certainly a very indirect method of getting at that proportion. *The records kept by the carriers would certainly show the tonnage of each class of traffic transported by them.*

Chapter XVI.

COMBINATION OF THROUGH AND LOCAL RATES.

RATES TO SHORTER-DISTANCE POINTS EXCESSIVE, BECAUSE THEY ARE COMBINATIONS OF THROUGH AND LOCAL RATES.

THE HAULS TO THE SHORTER-DISTANCE POINTS ARE THROUGH HAULS, AND NOT PART LOCAL AND PART THROUGH.

LOCAL RATES MADE TO COVER THE EXTRA EXPENSE OF LOCAL HAULS PRIMA FACIE EXCESSIVE AS PARTS OF THROUGH RATES MADE FOR THROUGH HAULS.

GEORGIA RAILROAD COMMISSION RATES MADE TO COVER THE EXTRA EXPENSE OF LOCAL HAULS, AND THEREFORE EXCESSIVE AS PARTS OF THROUGH RATES.

RATES TO SHORTER DISTANCE POINTS COVER EXPENSE OF FOUR TERMINALS.

MISLEADING STATEMENTS OF COUNSEL FOR THE CARRIERS ON THIS SUBJECT.

The excessiveness of the rates to the shorter-distance points in these cases is further shown by the manner in which they are made. They are what are known as

combination rates; that is, they are the through rates to what are termed the *basing* points—Opelika, Atlanta, Chattanooga, or Augusta—plus or combined with the local rates from those basing points on or back to the shorter-distance points.

In Case No. 70 it is testified by Y. Van den Berg that the rates from eastern cities to Grantville, Hogansville, and Lagrange are based on the Atlanta rates—that is, they are the through rate to Atlanta plus the local rates on to Grantville, Hogansville, and Lagrange; and the rates to West Point are the through rates to Opelika plus the local rate from Opelika *back to West Point*. Newnan has rates lower than the combination of the through rate to Atlanta plus the local rate to Newnan, because of the fact that Newnan is located on the Central of Georgia Railroad as well as on the Atlanta and West Point. (Record, p. 89, Case 70.)

In Case No. 68 Y. Van den Berg testifies that the rates from eastern cities to Greensboro and Madison are based on the Augusta rates—that is, they are the through rates to Augusta plus the local rates from Augusta on to those points; that the rates to Social Circle on certain classes of goods (1, 2, and B) are based on the Atlanta rates—that is, they are the through rates to Atlanta plus the local rate from Atlanta *back to Social Circle*, and that the rates on the

other classes are based on the Augusta rates; that the rates on certain classes of goods to Covington (1, 2, 3, A, and B) are based on the Atlanta rates and the rates on the other classes based on the Augusta rates, and that the rates to Conyers and Stone Mountain are based for the most part on the Atlanta rates. (Record, Case 68, bottom p. 69.)

In Case No. 69 the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are made up of the through rates to Chattanooga and the local rates from Chattanooga on to those points. (Record, p. 119, Case 69.)

It thus appears that the hauls from New York to Opelika and to Atlanta, respectively, and from Cincinnati to Atlanta, are treated as through hauls and those points are given the benefit of through rates, while on the other hand the hauls to the shorter-distance points are treated as part through and part local hauls.

From this combination of local rates with through rates there result the materially higher rates to the shorter-distance points than to the longer-distance points.

This is because of the fact that the expense to the carrier on strictly local hauls is very much greater than on through hauls or any proportion of such through hauls, and the further fact that *local rates are*

therefore made much higher per mile than through rates, with a view of covering this extra expense on local hauls.

LOCAL HAULS MORE EXPENSIVE THAN THROUGH HAULS.

That the expense per mile on local hauls far exceeds that on through hauls or any proportions of through hauls, and that local rates for strictly local hauls are therefore properly made much higher per mile than through rates is a universally recognized fact, and is testified to by all the railroad officials examined as witnesses in this case.

Y. Van den Berg testified, "it costs considerably more to handle local than through traffic." (Record, p. 89, Case 70.)

G. R. Knox testified that "local freight of a road is handled under entirely different circumstances and conditions from through or competitive freight," and that the expense to the carrier of strictly local hauls is greater per ton per mile than on long through hauls. (Record, p. 184, Case 69.)

THE HAULS TO SHORTER-DISTANCE POINTS ARE THROUGH HAULS UNDER THROUGH BILLS OF LADING.

All the railroad officials examined as witnesses for the defendants further testified that traffic from New York

and other northeastern cities is "*consigned through*" to the shorter-distance points—Newnan, Grantville, etc., Greensboro, Madison, etc.—and from Cincinnati to Calhoun, Adairsville, Kingston, etc., under *through bills of lading* issued by the initial carrier and naming the *aggregate through rate*. In other words, traffic is not consigned to the so-called basing points—Atlanta, Augusta, or Opelika—and then reshipped from those cities on to or back to the shorter-distance points, but the traffic is consigned through to shorter-distance points.

J. M. Culp testified that "consignments are made through and through rates are given." (Record, p. 132, Case 69.)

ALL THROUGH LINES TO ATLANTA AND OPELIKA CAN ALSO BE FORMED TO SHORTER DISTANCE POINTS.

ALL THESE LINES COMPETE FOR BUSINESS TO SHORTER-DISTANCE POINTS.

These witnesses also testified that all the through lines which can be formed from New York to Opelika and Atlanta, and from Cincinnati to Atlanta, can also be formed to the shorter-distance points by combinations with the road or roads on which those shorter-distance points are located, and that the through rates by these various lines are the same to each of those

shorter-distance points and are published, and *that the agents of these different lines to the shorter-distance points advertise for and solicit traffic from New York and other Northeastern cities, and from Cincinnati to those shorter-distance points, in competition with each other.*

(Answer of Y. Van den Berg to cross-questions 1 and 2, page 82, Record in Case 70; answer of R. E. Lutz to cross-question 29, page 166, Record in Case 69; answer of George R. Knox to cross-question 36, page 185, Record in Case 69; answer of George R. Knox to cross-questions 36, 39, pages 156, 157, Case 68; answer of W. A. Winburn to cross-questions 32, 36, pages 144, 145, Record in Case 68.)

TRAFFIC COMES THROUGH TO SHORTER DISTANCE POINTS IN SAME CARS IN WHICH SHIPPED WITHOUT TRANSFER OR BREAKAGE OF BULK.

It further appears, from the uncontradicted testimony of witnesses for the complainant engaged in business at the shorter distance points, that goods are not only shipped through from New York and other Northeastern cities and from Cincinnati to the shorter distance points on through bills of lading naming aggregate rates, *but also, that they come through in carloads and in the same cars in which originally shipped without transfer or breakage of bulk.*

S. T. Whittaker, cashier of the bank of West Point, and who has been in business there for twenty-two years, testifies, in answer to interrogatory No. 10:

"They" (the West Point merchants) "do not buy their goods from Opelika, but buy directly from New York and other Eastern and Western cities. The goods are shipped to West Point under a through bill of lading on a through rate *and come through without transfer in carload lots.*" (Record, p. 49, Case 70.)

Luther S. Turner, a hardware and grocery merchant at West Point for twenty-two years, testifies, in answer to interrogatory 10:

"The goods shipped from New York and other Eastern cities" (to West Point) "are shipped on a through bill of lading and arrive in West Point *in the same cars in which they were loaded.*" (Record, p. 51, Case 70.)

C. V. Truit, a "supply" merchant at Lagrange for fifteen years, testified in answer to interrogatory No. 10:

"The bulk of the goods are bought in New York and shipped to Lagrange on a through bill of lading * * * *without breakage of bulk.*" (Record, p. 40, Case 70.)

Lee Trammell, a dry goods merchant at Madison for eight years, testified in answer to interrogatory 10:

"Madison merchants buy their goods generally direct from New York and the goods are shipped to Madison under through bills of lading, with through

rates named in the bill of lading, and after reaching Charleston the goods are hauled through to Madison and without transfer or breakage of bulk, and in the same cars in which they were originally loaded at Charleston." (Record, p. 32, Case 68.)

To the same effect is the testimony in answer to interrogatory 10 of H. H. Fitzpatrick, who has been engaged in "general farm supply business at Madison for eleven years," and also the testimony of S. A. Turnell, who has been engaged in the dry goods business at Madison for fifteen years.

Walter L. Sessions, a merchant at Marietta for fifteen years, testified in answer to interrogatory 10:

"Marietta merchants buy goods from Cincinnati and other sources of supply and their goods are shipped direct from Cincinnati and other Western points on a through bill of lading, and goods brought in carloads are hauled direct to Marietta without transfer or breakage of bulk *and in the same cars in which they were originally loaded or shipped.*" (Record, p. 90, Case 69.)

D. N. Anderson, merchant at Marietta for twenty years, testified in answer to interrogatory 10:

"Goods bought in Cincinnati and other points or sources of supply are shipped to Marietta in carload lots under a through bill of lading in the originally loaded car without transfer or breakage of bulk." (Record, p. 92, Case 69.)

To the same effect is the testimony in answer to interrogatory 10 of J. P. Legg, a merchant and

cotton buyer at Marietta for twelve years, and also that of H. C. Dobbs, hardware merchant at Marietta for eleven years.

J. W. Knight, a hardware merchant at Cartersville for twelve years, testified, in answer to interrogatory 10:

"Goods bought in Cincinnati are shipped to Cartersville on a through bill of lading naming a through rate, and if in carload lots are shipped without transfer and in the *same cars in which they are originally loaded.*" (Record, p. 81, Case 69.)

Thomas Lumpkin, a merchant at Cartersville for twelve years, testified, in answer to interrogatory 10:

"Goods are shipped from Cincinnati, Ohio, under a through bill of lading naming a through rate to Cartersville, and are hauled through without a transfer or breakage of bulk and in the *same cars in which they are originally loaded.*" (Record, p. 80, Case 69.)

To the same effect is the testimony of E. Strickland, grocery merchant at Cartersville for eleven years, and also of J. E. Field, engaged in selling mules, fertilizers, cotton, and machinery since 1887.

The freight, then, to the shorter distance points is through freight and the hauls have *every element of through hauls.* They are made under through bills of lading naming aggregate rates, and the shipments go through in carload lots in the *same cars* in which originally loaded, without transfer or breakage of bulk.

RATES TO SHORTER DISTANCE POINTS COVER EXPENSE OF FOUR TERMINALS.

Each rate is intended to *cover* the expense of the *two* terminals and the intermediate haul. As the rates to the shorter distance points are made up of two distinct rates, they cover the expense of *four* terminals, when that of *two* only is incurred.

CHARGE OF LOCAL RATE AS PART OF THROUGH RATE PRIMA FACIE EXCESSIVE. SO HELD BY THE COURTS AND THE COMMISSION.

There is no *extra expense* set up as justifying the charge of local rates for parts of these through hauls.

The charge of the local rates as a part of the through rates to the shorter-distance points, *where the hauls are not in fact local hauls* and *the extra expense of local hauls is not incurred*, is *prima facie* excessive. The Commission has so held, and so, also, has the circuit court of the United States for the southern district of Georgia in the case of Augusta Southern Railroad Company *v.* Wrightsville and Tennille Railroad Company, Judges Pardee and Speer presiding. In that case the court says:

"Nor does it follow, as insisted for the respondent, that the full local rate *permitted by the State law* is, in the absence of a contract between the roads for through shipment, a just or reasonable rate on freight *plainly*

not local, but through freight. Why is it reasonable that a railroad company should charge a higher rate for local than for through shipments?

"In *King* v. *Railroad Co.* (4 Interst. Commerce Com. R., 262) we find this clear proposition:

"'The local rates are made for many trains that run slow, stop generally at every station, delivering and taking on freight, chiefly in parcels not loaded or unloaded by the shippers or consignees, but loaded or unloaded by the servants of the company. They, of course, carry freight occasionally in carloads to local points. Such shipments are, of course, much more expensive than through freights, and for such services an additional charge is reasonable, and the laws permit it.'

"But *no fair or equitable construction will justify the exaction of local rates for freights not local where services belonging to local rates is not offered.*"

(74 Fed. Rep., p. 527.)

We contend that the rates to the shorter-distance points in these cases are shown to be excessive from the fact that as parts of those rates, local rates, in the language of the court above quoted, "*are exacted for freights not local and where services belonging to local rates is not offered.*"

GEORGIA RAILROAD COMMISSION RATES, CHARGED AS PARTS OF THROUGH RATES TO SHORTER-DISTANCE POINTS, MADE FOR LOCAL HAULS AND TO COVER EXTRA EXPENSE OF SUCH HAULS.

The Hon. Allen Fort, a member of the railroad commission of Georgia, was examined as a witness for the

commission in these cases, and testified that the rates from Augusta, Atlanta, and Opelika to the shorter distance points in these cases were established by the Georgia railroad commission *as local rates for strictly local hauls*, and *that in fixing those rates the Georgia railroad commission took into account the extra expense on local hauls over that of through hauls.*

(Question 5 to Allen Fort, p. 101, Record in case 69, and answer thereto, top p. 104, Record in case 69; same question and answer, pp. 51, 53, Record in case 68; same question and answer, pp. 57, 59, Record in case 70.)

CONTENTION OF COUNSEL FOR THE CARRIERS AND HIS WITNESSES THAT THE THROUGH RATES TO THE SHORTER DISTANCE POINTS ARE REASONABLE BECAUSE THEY ARE MADE UP OF THE THROUGH RATES TO THE LONGER DISTANCE POINTS, WHICH ARE CLAIMED TO BE REASONABLE AS SUCH THROUGH RATES, AND OF THE LOCAL RATES BETWEEN THE LONGER AND THE SHORTER DISTANCE POINTS, WHICH ARE CLAIMED TO BE REASONABLE AS SUCH LOCAL RATES.

Counsel for the carriers in his printed argument says:

"It would seem that a combination of the two rates, each of which is just and reasonable for the distance covered by it, would result in an aggregate rate which is just and reasonable for the sum of those distances."

The two rates referred to are the through rates to the basing points and the local rates between those points and the shorter distance points. The through rate may be reasonable as a through rate and the local rate reasonable as a local rate. But the local rate, while reasonable as a local rate for a strictly local haul, can not be held to be reasonable as a part of a through rate *for an entire through haul.* Hence the sum of the two rates does not result in a reasonable *through* rate.

This is a specimen of the many fallacies which underlie the entire argument of counsel for the carriers and upon which the superstructure of that argument is built.

The witnesses for the carriers, railroad officials, also give it as one ground of their opinion that the rates to the shorter distance points are reasonable, the alleged fact, that they are made up of rates which are reasonable for the through haul to the longer distance points, and rates which are reasonable for the local hauls between the longer distance points and the shorter distance points.

Bearing in mind always, that the hauls to the shorter distance points are strictly through hauls under through bills of lading, and in the same cars from beginning to end, without transfer, and in no sense local hauls, the fact that the rates are made up of rates reasonable for a longer through haul,

and rates fixed to cover the extra expense of strictly local hauls, is conclusive evidence of their excessiveness.

MISLEADING STATEMENT OF COUNSEL FOR CARRIERS IN RESPECT TO RATES FIXED BY GEORGIA RAILROAD COMMISSION.

(1) Counsel for carriers states in his printed argument that "*as the railroad rates in Georgia are fixed by a commission of that State, it is fair to presume that they are reasonably low.*"

If he had said that it is fair to presume that they are reasonably low as *local rates*, he would have been correct.

In view of the fact that they are shown to have been fixed to cover the extra expense of local hauls, they *can not be presumed to be reasonably low as parts of through rates.* The presumption, on the contrary, is that they are excessive as through rates.

Counsel for carriers lays great stress upon the *alleged fact* that by permission of the Georgia railroad commission some of the roads in Georgia charge for local hauls rates *higher* than the "*standard*" *local rates* charged by the carriers in these cases as parts of the through rates to the shorter distance points.

This alleged fact is wholly irrelevant and of no weight whatever, in view of the undisputed testimony of the

Hon. Allen Fort that the amount of these "standard rates" is fixed to cover the extra expense of strictly local hauls. They may be lower than other LOCAL rates in Georgia and still excessive as proportions of through rates on through hauls. Though low as local rates, they are still local rates fixed to cover the extra expense of local hauls, and, therefore, excessive as proportions of through rates. They are from four to five times as high per mile as the through rates.

For example:

Local rate per ton per mile from Atlanta to Lagrange = 11.4 cents.

Through rate per ton per mile from New York to Atlanta = 2.6 cents.

As said by the court in the Augusta Southern Railroad Company Case, "*no fair or equitable construction will justify the exaction of local rates for freights not local where service belonging to local rates is not offered.*" (74 Fed. Rep., p. 527.)

RATES TO SHORTER DISTANCE POINTS VIOLATE THE RULE THAT THE RATE PER TON PER MILE SHOULD DECREASE AS THE LENGTH OF THE HAUL INCREASES.

The general rule is that, while the aggregate rate constantly increases as the length of the haul increases, the rate per ton per mile decreases as the length of the haul increases. Yet we find the reverse of this rule

applied to the hauls to the shorter distance points involved in these cases. When, for instance, traffic from New York and other Northeastern cities is hauled to Atlanta, the rate per ton per mile decreases up to that point, but when it is hauled through Atlanta to Newnan, Grantville, Hogansville, Lagrange, or West Point, *the rate per ton per mile suddenly becomes many times higher per mile from the time the traffic leaves Atlanta.* This, too, although it is hauled on in the same cars in which brought to Atlanta, and without any extra expense.

Chapter XVII.

EFFECT OF COMBINATION OF THROUGH AND LOCAL RATES ON BASING POINTS OR TRADE CENTERS AND ON SHORTER DISTANCE SURROUNDING POINTS.

IT BUILDS UP THE BASING POINTS OR TRADE CENTERS AT THE EXPENSE OF SURROUNDING LOCALITIES.

(*a*) IT ENABLES MERCHANTS AT BASING POINTS OR TRADE CENTERS TO COMPETE ON EQUAL TERMS WITH MERCHANTS AT SURROUNDING POINTS ON THE STREETS OF THE LATTER.

(*b*) IT EXCLUDES MERCHANTS AT SURROUNDING POINTS FROM TERRITORY BETWEEN SUCH POINTS AND THE BASING POINTS OR TRADE CENTERS, AND GIVES THE MERCHANTS OF THE LATTER A MONOPOLY IN THIS TERRITORY.

MOTIVE OF THE CARRIERS IN ESTABLISHING THIS SYSTEM.

IT ENABLES THEM TO SECURE THE RATES FOR TWO HAULS, ONE A THROUGH RATE AND ONE A HIGH LOCAL RATE, WHETHER THE TWO HAULS ARE MADE OR NOT.

The result, if not the intent, of making the rates to localities surrounding basing points the through rates

to the basing points plus the local rates between the basing points and the surrounding points is to build up the basing points or trade centers at the expense of such surrounding points.

(*a*) In the first place, under this system, merchants at the basing points can ship goods from the point of origin of the traffic through surrounding points to the basing points and then reship them to surrounding points at the same aggregate rate as that charged when the goods are put off at the shorter distance points in the first instance. This enables merchants at the basing point to *compete on equal terms with merchants at surrounding points at the very threshold of the latter.*

Suppose the rate from shipping point to longer distance basing point to be 80 cents, and the rate from the basing point back to the shorter distance point 35 cents, under this combination system the rate to the shorter distance point will be the sum of the two rates, to wit, $1.15, and this is also the aggregate rate which the merchant at the longer distance point will have to pay for a haul from the shipping point to the basing point and for the haul from the basing point back to the shorter distance points. This is illustrated below.

DIAGRAM I.

Rate to longer distance point	$0.80
Local rate from longer distance point back to shorter distance point	.35
Rate to shorter distance points	1.15
Aggregate rate on reshipment from longer distance basing point back to shorter distance point	1.15

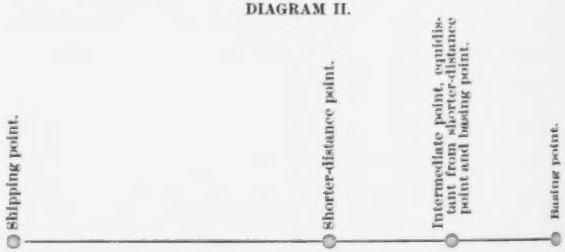
(*b*) *As to intermediate territory*—that is, territory between the longer distance basing point and the shorter distance point—the merchant at the latter is excluded therefrom and the merchant at the longer-distance basing point is given a *monopoly*.

If the merchant at the shorter distance point should undertake to sell goods at any point between the shorter-distance point and the longer distance basing point, *he will have to pay three rates*, to wit, the through rate to the longer distance basing point plus the local rate from the longer distance basing point back to the shorter distance point, plus the local rate from the shorter distance point on to the intermediate point; whereas the merchant at the longer distance basing point will only have to pay *two rates*, to wit, the rate

to the longer distance basing point plus the local rate back to the intermediate point.

If, in a given instance, the rate from the shipping point to the basing point is 80 cents, from the basing point back to the shorter distance point 35 cents, and to an intermediate point equidistant from the basing point and the shorter distance point 10 cents, then on a reshipment from the shorter distance point to this intermediate point the rate will be 80+35+10=$1.25, and the rate on reshipment from the basing point to this intermediate point will be 80+10=90 cents—the former rate exceeding the latter by 35 cents. This is illustrated below:

DIAGRAM II.



	Cents.
Rate from shipping point to basing point	80
Rate from basing point and shorter-distance point to intermediate point.	10
Rate from basing point to shorter-distance point	35
Rate on reshipment from basing point to intermediate point, 80+10	90
Rate on reshipment from shorter-distance point to intermediate point, 80+35+10	$1.25

In the illustration above given the intermediate point is supposed to be equi-distant from the basing point

and the shorter distance point, but the basing point will have the advantage in rates in all the territory between the shorter distance point and longer distance basing point. This advantage in favor of the basing point will *increase* from such intermediate point on to the basing point and will *decrease* from such intermediate point on to the shorter distance point, until at the latter, as we have seen, the longer distance basing point will be placed on terms of equality, so far as rates are concerned, with the shorter distance point.

MERCHANT AT SHORTER DISTANCE POINT NOT PLACED ON AN EQUALITY WITH MERCHANT AT BASING POINT ON STREETS OF THE LATTER.

If a merchant at shorter distance point reships goods to basing point he will have to pay 80 cents, the through rate to the basing point, plus 35 cents, the local rate from basing point back to shorter distance point, plus 35 cents, the local rate from shorter distance point to basing point, *a total rate of $1.50 as against a rate of 80 cents paid by the local merchant at the basing point.*

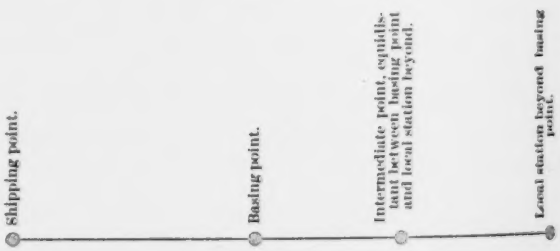
WHERE BASING POINT IS SHORTER DISTANCE POINT.

In the foregoing diagrams the basing point is the longer distance point and the rates to the shorter distance point are made up of the rate for the haul through the shorter distance point to the basing point plus the local rate back.

Where the basing point is the shorter distance point and the haul is from the point of origin of the traffic through the basing point to a locality beyond, the rate to the latter locality is the rate to the basing point plus the local rate from the basing point on.

In the latter case, where the basing point is the shorter distance point, the result of the combination of the through and local rates is exactly the same as in the case where the basing point is the longer distance point; that is, it enables the merchant at the basing point to compete upon terms of equality, so far as rates are concerned, with the merchant at the shorter distance point on the streets of the latter, and it also excludes the merchant at the shorter distance point from all the territory between the two points, and gives the merchant at the basing point an absolute monopoly in that territory.

This is illustrated below:


Shipping point.
Basing point.
Intermediate point, equidistant between basing point and local station beyond.
Local station beyond basing point.

Rate to basing point	$0.80
Local rate from basing point to local station beyond	.35
Rate from shipping point to local station beyond basing point	1.15
Rate from basing point and local station beyond basing point to intermediate point	.10
Aggregate rate on reshipment from local station beyond basing point to intermediate point, 80 cents + 35 cents + 10 cents	1.25
Aggregate rate on reshipment from basing point to intermediate point, 80 cents + 10 cents	.90
Excess of aggregate rate from local station beyond basing point	.35

WHERE BASING POINT IS LONGER DISTANCE POINT THE CARRIER CHARGES FOR SERVICES NOT RENDERED.

A distinction between the case where the basing point is the longer distance point and the case where the basing point is the shorter distance point is that in the former the carrier charges and receives compensation for two hauls not in fact made.

As an illustration of this we will take the case of West Point as the shorter distance point and Opelika as the basing point (case 70) on shipments from New York. The rates on such shipments are the rates for the haul through West Point 22 miles on to Opelika plus the local rate from Opelika 22 miles back to West Point, ALTHOUGH THE GOODS ARE PUT OFF AT WEST POINT AND NOT HAULED ON TO OPELIKA AND BACK.

In this instance the carriers receive pay for the haul from West Point to Opelika and from Opelika back to West Point when such hauls have not in fact been made.

In such cases the carrier receives the same compensation for a single through haul to the shorter-distance point as it would receive on two distinct hauls—one a through and one a local; the same compensation in fact as if it had hauled the goods through the shorter-distance point and delivered them at the longer-distance point and then hauled them back again to the shorter-distance point.

MOTIVE OF THE CARRIERS IN ESTABLISHING THIS SYSTEM.

The question arises, why does competition at the longer-distance point have the *precise* effect of enabling the merchant at the longer-distance point to monopolize the business in territory between the two points and to compete on equal terms with the merchant at the shorter-distance point at the *very doors of the latter* and also enable the roads to charge *for services not rendered?*

This can not be claimed to be the *accidental* result of greater competition at the longer-distance point. There is too much evidence of *design*. It must be presumed that the carriers intend the natural results of their rate adjustments, that they intend to charge for a service not rendered, and to give the basing points or trade centers, as they are sometimes called, the advantage over surrounding localities and to build

up those basing points or trade centers at the expense of such surrounding localities.

Why does not competition have this effect in Trunk Line Territory?

The inquiry naturally suggests itself, *cui bono?* What benefit can result to the carriers from such a system? What is their object? The answer is obvious. The tendency of this system is to make towns or localities surrounding basing points tributary or dependent upon such basing points for their supplies of goods. The basing points become, in other words, distributing points for surrounding territory, and the carriers thereby have the benefit of two hauls, the through haul to the basing point and the haul from the basing point at high local rates to surrounding localities; and if merchants at surrounding localities buy their goods direct from the sources of supply of those goods and not from the basing point, the carrier receives the same rate as if the goods had been shipped in the first instance to the basing point and then hauled back or on to surrounding localities.

IT IS THUS SEEN THAT THE CARRIER GETS THE BENEFIT OF TWO HAULS, OR OF TWO RATES, WHETHER THE MERCHANT AT THE SHORTER-DISTANCE POINT BUYS HIS GOODS AT THE BASING POINT OR NOT, AND

WHETHER OR NOT THE HAUL IS MADE ON TO THE BASING POINT AND BACK TO THE SHORTER-DISTANCE POINT.

Competition has "nothing to do with the case." It originated solely for the purpose of the carriers to "put money in their pockets" by unlawful methods. We say unlawful, because the result is unjust discrimination.

Chapter XVIII.

SOUTHERN TRADE CENTER SYSTEM.

THE COMBINATION OF THROUGH AND LOCAL RATES IS KNOWN AS THE SOUTHERN TRADE CENTER SYSTEM AND PREVAILS AS A RULE IN SOUTHERN TERRITORY AND NOT ELSEWHERE.

THE LONG AND SHORT HAUL RULE OF SECTION 4 AIMED AT THIS SYSTEM.

COMMENTS OF JUDGE COOLEY AND MR. ALDACE F. WALKER ON THIS SYSTEM.

PROBABLE ORIGIN OF THIS SYSTEM.

This system of combining through and local rates is known as the "Southern Trade Center System." It existed when the act to regulate commerce was passed, and now exists only in this Southern territory, and the long and short haul rule of the act to regulate commerce must have been aimed at this system.

In this connection there is set forth below as part of this argument what was said in reference to this Southern Trade Center System, or combination rate system,

by that eminent jurist and law writer, Judge Cooley, when a member of the Commission, in the case entitled *In re Louisville and Nashville Railroad Company* (1 I. C. C. R., pp. 84, 85):

"The preeminence of such trade centers in the territory reached by the petitioner's roads is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and non-competitive towns, the former being the trade centers, must have had some influence to increase steadily the *disparity in growth and prosperity*.

"By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country, it was said, are *dependent* on the trade centers for their supplies, and they get indirectly the benefit of low rates to the distributing points in lower prices than could otherwise be given them. In proportion also as the distributing points are prosperous they can and do extend to the dealers at other points *credit and indulgence*. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits what towns shall be trade centers and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet as they do not at the same time feel a like pressure from non-competitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

"*One result is that towns recognized by railroad managers as trade centers come to be looked upon* as towns with *special privileges*, and other towns strive for recognition as such, and complain perhaps of injustice when they fail. It was made very clear by the evidence produced in behalf of the railroads that the exceptionally favorable rates which were given to certain localities were in some cases *given to build up trade centers;* and as they had had that effect, and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality. Of this it may be said, *first*, that as between different localities it is no sound reason for discriminating in favor of one as against another that the purpose is to build up the favored locality as a trade center; and, *second, if the discrimination has existed and has had its effect, the fact that large establishments have* thereby been encouraged is no reason why the injustice should be perpetuated. *This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.*"

In the case of *Martin et al.* v. *Chicago, Burlington and Quincy Railroad Company* (2 I. C. C. R., 46, 47), Judge Cooley says in reference to the bearing of the act to regulate commerce on this Southern Trade Center System:

"But a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the act to regulate commerce. One of the reasons for the passage of that act was that, by means of rebates and other contrivances, large towns

and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. * * * All large towns, by reason of their being large, inevitably secure certain advantages in transportation. They get more roads, more trains, more agents and servants to attend promptly to business demands, and will be more accommodated, within the limits allowed by law, than will smaller towns, but it does not lie within the power of this Commission to add to these advantages by compelling the carriers operating the lines which reach out from a great railroad center to give to the large towns on their lines more favorable rates than they give to those which are smaller. The fact that under relatively equal rates one town, by reason of its situation, its size, the extent of its manufactures or trade, or for any other reason, secures the major part of the trade with the small towns, is not a fact which can empower this Commission to interfere. There may be great hardships in the situation, but those do not change the law. In contemplation of a law which was enacted in the interest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so."

In the case entitled "In re Tariffs and Classifications of the Atlanta and West Point Railroad Company et al.," Mr. Aldace F. Walker, then a member of the Commission, but who resigned to accept employment from a railway association, said on this subject (3 I. C. C. R., p. 19):

"Previous to the passage of the act to regulate commerce it was the universal custom *in this section of the country* to establish rates to certain basing points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points.

"These points were selected by reason of their situation upon navigable streams, or at the junction of railroad lines, or as determined by other considerations. Their number was large. The result of the system was that rates quite reasonable, and in some cases low, were given to and from the basing points, and that goods were thence distributed at high local charges in all directions. For example, the rates from New York or Chicago to Atlanta plus the rate from Atlanta to local points north, east, south, and west therefrom, were the rates charged from New York or Chicago to the latter points direct; and the latter rates were usually very much in excess of rates to distributing points situated at a greater distance over the same line in the same direction. *While this method was satisfactory to the centers which it created and maintained*, the smaller towns and rural communities protested against a system which worked so obviously to their disadvantage. Since the passage of the act the number of these favored localities has decreased in the Southern States, and upon many of the lines the disparity in rates as between them and intermediate or local stations has been diminished. So far as passenger traffic is concerned the rates are generally, if not universally, upon a mileage basis; except upon a few of the weakest roads they are 3 cents per mile."

In the case of the *Union Pacific Company* v. *Goodridge* (149 U. S., 690) this court says that the act to regulate commerce was designed "to cut up by the

roots the entire system of rebates and discriminations in favor of *particular localities*, special enterprises, or favored corporations, and to put all shippers on an absolute equality;" and the court also pertinently refers to the fact that carriers "deriving their franchises from the legislature and *depending upon the will of the people for their very existence*, are bound to deal fairly with the public * * * and to put *all their patrons upon an absolute equality*."

Origin of the system. Distributing points.

Trade centers are sometimes called distributing as well as basing points, and the fact that they were originally distributing points for surrounding localities may have originated the practice of charging through rates to the distributing point and local rates from the distributing point to surrounding localities, which then purchased their goods and supplies from distributing points. The distributing point was then a reservoir from which goods were sent out to surrounding localities. There were then two distinct hauls—a through haul to the distributing point and local hauls thence to surrounding points. The merchants at surrounding points in those days bought their goods from the distributing point, and not from New York or Cincinnati, the sources of supply.

The situation now, however, has wholly changed, and there is no excuse whatever for charging local rates as

parts of through rates to points surrounding trade centers or basing points. *The reason ceasing, the practice or rule should cease.* As the proof shows, merchants at the shorter-distance points do not buy their goods from Augusta, Atlanta, or Opelika, but direct from Cincinnati or New York and other Northeastern cities, and they are consigned and hauled through in carload lots in the same cars in which originally shipped to the shorter-distance points.

Chapter XIX.

BASING POINT OR TRADE-CENTER SYSTEMS OUTSIDE OF SOUTHERN TERRITORY.

BASING-POINT SYSTEM IN TRUNK-LINE TERRITORY.

DISTINCTION BETWEEN BASING-POINT SYSTEMS OUTSIDE OF SOUTHERN TERRITORY AND THE SYSTEM WHICH PREVAILS IN THAT TERRITORY.

THE LATTER VIOLATES THE LAW, THE OTHERS DO NOT.

WATER COMPETITION IN TRANSPORTATION FROM THE EASTERN SEABOARD TO CHICAGO HAS NOT RESULTED IN LOWER RATES TO CHICAGO THAN TO INTERMEDIATE POINTS.

LOWER RATES TO BASING POINTS OR TRADE CENTERS THAN TO SURROUNDING SHORTER DISTANCE POINTS NOT NECESSARY TO THE PROSPERITY OF THE FORMER.

Counsel for the carriers, in his printed argument, calls attention to the fact that basing points or trade centers are not confined to Southern territory. In this connection he cites the basing-point system in what is

known as trunk-line territory—that is, territory *north* of the Ohio and Potomac rivers and east of the Missis sippi as far as New York and Boston on the Eastern seaboard.

In this territory the rates from New York to Chicago are taken as the basis—that is, as 100 per cent—and the rates to intermediate shorter distance points are certain percentages of the New York-Chicago rate, the amount depending on the length of the haul.

For example, the rates from New York to Indianapolis are fixed at 93 per cent of the New York-Chicago rate—the distance from New York to Indianapolis being 825 miles and from New York to Chicago 912 miles. In like manner the rates from New York to Detroit are fixed at 78 per cent of the New York-Chicago rate; from New York to Cincinnati at 87 per cent; from New York to Columbus, Ohio, at 87 per cent, and from New York to Cleveland, Ohio, at 71 per cent.

It is thus seen that under this basing-point system there is no greater charge for the shorter than the longer haul.

This is a radical distinction between the Southern trade-center or basing-point system and the trunk-line basing-point system. The latter is not in contravention of the rule of the fourth section of the law, while the former is.

COMPETITION IN TRANSPORTATION FROM THE EASTERN SEABOARD TO CHICAGO AND OTHER COMPETITIVE POINTS IN TRUNK LINE TERRITORY HAS NOT NECESSITATED LOWER RATES TO SUCH POINTS THAN TO INTERMEDIATE SHORTER DISTANCE POINTS.

The points above named, Indianapolis, etc., are known as "competitive points," and the rates from New York and Boston to shorter-distance local points are in some cases made *as high as the rates to "competitive points" beyond, but not higher.*

All railroad authorities claim it to be a well-established fact that the rates from New York, Boston, and the Eastern seaboard points to Chicago and intermediate competitive points are influenced or controlled by water competition by lake and canal. *It is a significant fact that, notwithstanding this water competition, the rates to shorter distance local points are not made higher than the rates to longer distance competitive points beyond.*

COMBINATIONS OF RATES FROM THE EAST TO THE MISSISSIPPI WITH RATES FROM THE MISSISSIPPI ON TO THE WEST DO NOT RESULT IN HIGHER RATES TO THE SHORTER THAN TO LONGER DISTANCE POINTS.

Counsel for carriers also calls attention to the fact that there are *combination rates* in sections of the

country other than the South, and cites in support of this assertion the fact that rates from the East to points west of the Mississippi River are *combinations* of rates to the Mississippi with rates from that river on. *These combination rates, however, are not greater for the shorter than the longer haul over the same line.*

This *radical* distinction between those combination rates and the combination rates in vogue in the South, and illustrated in the present cases, is ignored by counsel for the carriers. *The former are lawful; the latter are unlawful.*

HIGHER RATES TO SHORTER THAN TO LONGER DISTANCE TRADE CENTERS NOT ESSENTIAL TO THE PROSPERITY OF THE LATTER.

In this connection the attention of the court is called to the fact that "trade centers" exist and flourish in this trunk-line territory and in the Northern and Western territory without the discrimination in favor of such trade centers which results from making the rates to surrounding shorter distance local points higher than to the trade centers. *This is a demonstration that this system of unjust discrimination which prevails in Southern territory is not essential to the maintenance and prosperity of trade centers in that territory.*

Chapter XX.

OBJECTION ON THE PART OF CARRIERS, THAT GIVING SHORTER DISTANCE POINTS RATES NOT HIGHER THAN THOSE TO LONGER DISTANCE BASING POINTS WOULD INJURE SUCH LONGER DISTANCE POINTS—IT WOULD INJURE NO LEGITIMATE INTEREST OF SUCH BASING POINTS.

IF THE SITUATION WERE REVERSED.

As we have seen, the operation or effect of the combination of through and local rates in making rates to shorter distance points around basing points or trade centers is to enable merchants at trade centers to *monopolize business in intermediate territory* and to *compete, at least on equal terms*, with local merchants at such surrounding points.

One of the witnesses for the roads, George R. Knox, stated as an objection to making the rates to the shorter distance points not higher than to the longer distance points, that in that event the longer distance points could not compete with the merchants at the shorter distance points *at their own doors* on equal terms; in other words, that rates relatively just would

drive Opelika and Atlanta merchants out of competition with the local merchants at shorter distance points at the *very doors of the latter.*

(Testimony of George R. Knox. Record, Case 69, p. 181.)

A merchant 40 or 80 miles away from a locality has no *natural* right to compete on equal terms at that locality with a merchant doing business there—at least he has no right to do this by means of *preferential rates.*

Therefore, giving shorter distance point rates not in excess of those to longer distance basing points would not be detrimental to any *legitimate* interests of the latter.

Moreover, as we have seen in another chapter of this argument, rates to shorter distance local points higher than to competitive points beyond have not been essential to the prosperity of such competitive points in Trunk Line, Eastern, and Western territories, and are, therefore, we may infer, not necessary to enable Southern trade centers to maintain themselves. In fact, as we have shown, the building up of local stations around trade centers, which would result from relatively just rates to those local stations, will "by reflex action" proportionately enhance the prosperity of the trade centers themselves.

If the situation were reversed!

Suppose the situation were reversed and preferential rates were given, for example, to Lagrange and West Point, under which they could compete on equal terms *at Opelika* with Opelika merchants, or to Madison or Social Circle, or to Cartersville, Acworth, or Marietta, under which they could compete on equal terms *on the streets of Atlanta* with Atlanta merchants.

According to an ancient fable, a wolf, seeing shepherds eating sheep, exclaimed: "What an uproar there would be if I were doing the same!"

If the shorter-distance points in these cases were given rates which would enable them to compete in the streets of Opelika or Atlanta with their local merchants, it would be considered as monstrous as if a sheep-killing dog or wolf were caught eating sheep.

It seems to be considered, however, the proper and just thing for Atlanta and Opelika. As Judge Cooley says, in one of the quotations heretofore made from him, "*one result is that towns recognized by railroad managers as trade centers come to be looked upon as towns with special privileges.*"

People who have enjoyed for a length of time monopolies or unjust advantages over their neighbors finally come to consider such advantages as due them by divine

right. All human experience, from the example furnished by kings on down, demónstrates this. It is startling that this should find illustration under a government "of the people, by the people, and for the people," and in the practices of corporations, which derive their "*right to exist*," as said by the Supreme Court, from the people. Counsel for the carriers urged before the court that the interest of the *public*, as represented by Atlanta, would be injured. No *legitimate* interest of Atlanta can be injured. Atlanta, moreover, is *not the entire public*. "There be others."

We do not believe, however, that Atlanta's interests will receive detriment, but that, as shown in a subsequent part of this argument, *Atlanta will in the end be benefited by a just adjustment of rates as between Atlanta and surrounding localities.*

Cincinnati and New York will not be benefited at the expense of Southern trade centers, Atlanta, Macon, etc.

It is claimed, also, that giving shorter distance surrounding points rates relatively just as compared with those to Southern trade centers will benefit the great sources of supply, New York and other Eastern seaboard cities, and Cincinnati, etc., at the expense of the Southern trade centers. This position is manifestly unsound. Those sources of supply will still

continue to be sources of supply *as they now are*, but not to any increased extent, *except as the prosperity of shorter distance points surrounding trade centers will be promoted by just rates and their demand for supplies increased.*

The proof shows that, even under existing discriminations, the merchants at shorter distance points now procure their supplies from New York and other Eastern seaboard cities and from Cincinnati, etc., and not from Atlanta or Opelika.

Chapter XXI.

What benefit to shorter distance points are competitive rates to basing points?

They do not do away with or ameliorate the discrimination.

It is claimed by counsel for the carriers and by his witnesses (railroad officials) that the shorter distance points have the benefit of the rates resulting from competition to the longer distance basing points. This at first sight seems plausible, but on examination it will be found to be only *plausible*.

Whatever benefit there might be to the shorter distance points in having their rates made up in part of the competitive rates to the longer distance basing points, is nullified or neutralized by the charge of the high local rates between the basing points and the shorter distance points as parts of the rates to the latter.

(*a*) In the first place, as we have seen, the charge of this local rate as part of the through rates to the shorter distance points makes the entire rate excessive,

and results in a rate per ton per mile to the shorter distance points from two to six times higher than the average receipts per ton per mile on roads all over the country embracing the principal defendants. These average receipts per ton per mile are proven, as we have shown by testimony of witnesses for the defendants, to be *the index of the rates* charged on these various roads.

(*b*) In the second place, the charge of these local rates between the longer distance basing points and the shorter distance points, as parts of the rates to the latter, enables the competitors in business of the shorter distance points, to wit, the longer distance basing points, *to compete with the merchants of the shorter distance points at their own doors and to monopolize the business in intermediate territory.*

What possible benefit, then, to the shorter distance points, from a business point of view, are the competitive rates to the longer distance points? *They do not ameliorate or do away with the discrimination against the former.*

The benefit of competitive rates to the longer distance points stops at and is confined to those points. *It does not flow onward to the shorter distance points, but is stopped by a dam in the shape of the high local rates charged between the competitive or basing points and the shorter distance points.*

If existing rates to the shorter distance points were reduced one-half this would not benefit those points in their competition with the longer distance points if the rates to the latter were also reduced one-half, and the present discrimination against the shorter distance points was thus maintained.

Chapter XXII.

COMPETITION CAN NOT JUSTIFY DISCRIMINATION TO THE EXTENT SHOWN IN THESE CASES.

THE AMOUNT OR EXTENT OF THE DISCRIMINATION A MATTER TO BE CONSIDERED BY THE COMMISSION AND BY THE COURTS.

We also contend, as heretofore stated, that *competition can not justify discrimination to the extent shown.*

It is manifest that although a substantial dissimilarity of condition resulting from competition may exist, the extent of the discrimination may be in excess of what is warranted by such dissimilarity of condition.

In the *Chattanooga Case* (85 Fed. Rep., 118), Judge Severens says on this point:

"When a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination of the question whether the conditions are similar, and if dissimilarity is found, *then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of.* * * * In other words, my opinion is that the restraint of section four is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and

that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

Counsel for the carriers contends that Judge Severens is the only authority for the proposition that where a dissimilarity of conditions is shown the extent of the discrimination which the dissimilarity justifies is a matter to be considered and determined by the courts. In this we think counsel is mistaken. This court, in the *Alabama Midland Case* (168 U. S., 173), states "*that it would not approve the position that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carrier.*" The following is an extract, bearing upon this question, from the opinion of the court in that case:

"The last sentence in this extract is objected to by the Commission's counsel as declaring *that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carriers.* If so read, we should not be *ready to adopt or approve such a position.* But we understand the statement, read in the connection in which it occurs, to mean only that when once a substantial dissimilarity of circumstances and conditions has been made to appear the carriers are, from the nature of the question, better fitted to adjust rates to suit such dissimilarity of circumstances and their conditions than courts or commissions; and when we consider the difficulty, the practical

impossibility, of a court or a commission taking into view the various and continually changing facts that bear upon the question, and intelligently regulating rates and charges accordingly, the observation objected to is manifestly just. *But it does not mean that the action of the carriers, in fixing and adjusting the rates, in such instances, is not subject to revision by the Commission and the courts, when it is charged that such action has resulted in rates unjust or unreasonable, or in unjust discriminations and preferences.*"

In the concluding clause of the proviso to the fourth section of the law the authority is expressly conferred upon the Commission to prescribe the *extent* of the discrimination which may be justified under that section, as follows:

"The Commission may from time to time prescribe the *extent* to which designated common carriers may be relieved from the operation of this" (fourth) "section of the act."

This is an express recognition in the law itself of authority in the Commission to consider and prescribe the extent to which discrimination may be practiced under the fourth section, even where the circumstances and conditions are substantially dissimilar. If the circumstances and conditions are not substantially dissimilar, no discrimination at all can be practiced.

The amount or extent of the discrimination is, therefore, a matter to be considered and scrutinized by the court in this and all similar cases. If carriers are to

determine the extent of the discrimination a dissimilarity of condition in a given case may justify, then, whenever such dissimilarity is shown, the case is taken from under the law, and neither courts nor Commission have the power to interfere, and carriers are left at liberty to practice discrimination to any extent they please over and above the amount justified by the dissimilarity of condition.

In this connection the following extract from the opinion of Judge Severens in the "Chattanooga Case" is apropos:

"The argument of counsel for the carriers is in effect that the *extent* of the discrimination must be confided to the judgment of the railroad officials, whose ability and experience best qualify them for the task. If this be so, there is nothing for the Commission or the court to do but to take notice of the fact that the conditions are dissimilar and abandon all further inquiry. It is fundamental that no such proposition as this can be admitted."

Discrimination is claimed to be justified only on the ground that it is necessary to enable the carrier making the discrimination to meet competition and thus retain competitive traffic. In determining the extent to which a carrier may thus go in protecting its own interest, we should apply the maxim of the law "*so use your own that you do not injure the interest of another*" (*sic utere tuo ut alienum non lædas*). Under this rule discrimination is only justified to the extent that it may be

practiced without inflicting material injury on any *legitimate* interest of the public or any portion of the public. The Supreme Court recognizes this in the "Alabama Midland Case" when it holds that regard is to be had to the interests of the public as well as of the carrier, and in the "Social Circle Case" when it holds that the interests of the community from which the traffic is shipped and the community to which the traffic is shipped are to be considered, as well as the interests of the carriers.

Inasmuch as the carrier derives its franchise, its "right to exist," from the public, the interest of the public should be held to be paramount, and if in cases of conflict the interest of either is to be ignored, it should be that of the carrier.

In determining, therefore, whether discrimination is justified to the extent shown in these cases, it is proper to consider the effect of the discrimination on the shorter-distance points, the localities discriminated against. For this purpose I will call the attention of the court to the injury which has resulted to the shorter-distance points, as shown by the testimony in these cases of their leading merchants in different lines of business.

The following chapter of this argument will be devoted to that testimony:

Chapter XXIII.

INJURY TO SHORTER DISTANCE POINTS.

TESTIMONY OF MERCHANTS AT SHORTER DISTANCE POINTS SHOWING INJURY RESULTING FROM DISCRIMINATION IN FAVOR OF LONGER DISTANCE POINTS, ATLANTA AND OPELIKA.

It appears, in the first place, that Opelika merchants sell goods in competition with the local merchants at West Point, Lagrange, etc., and in territory adjacent to those points, and that Atlanta merchants sell goods at Stone Mountain, Conyers, Covington, etc., and at Marietta, Acworth, Cartersville, etc., and in territory adjacent to those points, in competition with their local merchants.

(See testimony in answer to direct interrogatories 3, 4, and 5 of S. T. Whittaker, cashier of the Bank of West Point; James S. Baker, merchant at West Point; Zach Hagedorn, wholesale and retail merchant at West Point; Luther S. Turner, merchant at West Point; Fuller E. Calloway, merchant at Lagrange; C. V. Truitt, merchant at Lagrange; W. V. Gray, merchant at Lagrange; E. R. Bradfield, merchant at Lagrange; Lee Trammell, merchant at Madison; H. H. Fitzpatrick, merchant at Madison; S. A. Turnell, merchant at Madison; L. J. Aldmand, merchant at Conyers; Walter L. Sessions,

merchant at Marietta; D. N. Anderson, merchant at Marietta; J. P. Legg, merchant at Marietta; H. C. Dobbs, merchant at Marietta; J. W. Vaughn, merchant at Cartersville; E. Strickland, merchant at Cartersville; J. E. Field, merchant at Cartersville.)

It is self-evident that where two localities are so situated with reference to each other that they compete for business in the same territory a system of rates which is preferential to one of those localities and discriminatory against the other benefits the one and injures the other—or, in other words, builds up the one locality at the expense of the other. The evidence of the witnesses, both for the defendants and for the complainant, is uniform in support of this proposition. In answer to direct interrogatory No. 6 the merchants above named testified that they could not successfully compete for business at their own doors in competition in the one case with Opelika merchants and in the other cases with the Atlanta merchants, and that this was because of the discrimination in rates in favor of Opelika and Atlanta.

(See answers of above-named merchants at West Point, Lagrange, Madison, Conyers, Marietta, and Cartersville in answer to interrogatory 6 (Record, pp. 77, 79, 81, 83, 85, 90, 91, 94, Case 69).

These witnesses all state that this discrimination in rates in favor of Opelika and Atlanta has existed for a

long series of years, and has greatly retarded the growth and prosperity of the localities discriminated against. S. T. Whittaker, cashier of the Bank of West Point, testifies in answer to interrogatory No. 9 that—

"A conservative estimate established that the discrimination against West Point in favor of Opelika has retarded the growth of West Point at least 40 per cent, as it has simply run all jobbers and wholesale merchants out of town and hampered the manufacturing interests to such an extent that new capital will not invest in that line. It has also hurt the price of real estate in proportion." (Record, p. 49, Case 70.)

James S. Baker, a West Point merchant for thirty-one years, testifies in answer to interrogatory No. 18 that—

"The difference in rates to Opelika and West Point is so much that it pays our farmers to haul goods from Opelika by wagons. Opelika merchants draw trade from within 4 miles of our town on account of said difference in prices caused by lower rates. The farmers say that it pays them to haul their cotton that distance and buy their goods from Opelika merchants on account of aforesaid difference in price." (Record, p. 48, Case 70.)

Zach Hagedorn, a wholesale and retail merchant at West Point for twenty-six years, in answer to interrogatory No. 18 testifies that—

"It is a fact that the discriminating rates have caused many of our merchants to be less prosperous

than they would have been. For example, the section of country between West Point and Opelika known as Casseta district formerly gave all its trade to West Point, and we have examples almost daily of the effect of the lower rate in favor of Opelika—hence our losses. I also state that the rate given to Opelika makes it a better cotton market; therefore loses to West Point the marketing of a great deal of cotton from a country or section directly tributary to West Point." (Record, p. 46, Case 70.)

Fuller E. Calloway, merchant at Lagrange for nine years, in answer to interrogatory No. 8 testified that—

"Opelika merchants ship first-class freight from New York City through Lagrange to Opelika for $1.14 per hundred pounds. The Western Railway of Alabama and the Atlanta and West Point Railway haul first-class freight from Opelika to Lagrange for 32 cents per hundred pounds. This makes a total rate on first-class freight from New York to Opelika and then hauled back to Lagrange of $1.46 per hundred pounds, while the said carriers charge and collect the sum of $1.53½ per hundred pounds to haul first-class freight from New York City to Lagrange. In doing this the carriers haul first-class freight 38 miles beyond Lagrange and haul it back to Lagrange for 7½ cents per hundred pounds less than they will stop it at Lagrange. *This enables the Opelika merchant to ship his goods from New York City through Lagrange to Opelika, 38 miles beyond, and then reship them back to Lagrange at 7½ cents per hundred pounds less (on first-class freight) than the Lagrange merchant can ship them direct from New York to Lagrange. This enables the Opelika merchant to undersell the Lagrange merchants at their front doors 7½ cents per hundred pounds and make the same profit.*" (Record, p. 39, Case 70.)

W. V. Gray, a Lagrange merchant for twenty-two years, in answer to interrogatory No. 8, testifies that—

"Opelika merchants can get goods laid down at their own town and reshipped to Lagrange for less than original Lagrange rates." (Record, p. 41, Case 70.)

E. R. Bradfield, a merchant at Lagrange for twenty-five years, in answer to interrogatory No. 8, testifies hat—

"Opelika merchants can haul goods to their own town and reship back to Lagrange for less than Lagrange can get them." (Record, p. 42.)

Lee Trammell, a merchant at Madison, Ga., for eight years, in answer to interrogatories 8, 17, and 18, testifies as follows:

"Goods can be shipped from the Eastern and Northern points to Atlanta and then reshipped to Madison and points around and beyond Madison at a less rate of freight than Madison has on same class of goods shipped from Eastern and Northern points. The rate on first-class freight from Eastern points through Madison to Atlanta is $1.14 per hundred pounds, but if stopped off at Madison the freight is $1.43 per hundred pounds; the goods reaching Madison over the Georgia Railroad.

"Rates which discriminate against a locality stagnate business in the locality discriminated against and retard its growth and progress, for the reason that no business enterprise can succeed or be built up where the merchants or manufacturers of the locality can not successfully compete in prices in their own territory with outside merchants who sell in their territory by reason of high freight rates to the particular locality.

"Madison merchants are unable to do any business with the country stores in this county, for the reason that Atlanta, Athens, and Milledgeville merchants, by reason of lower freight rates, can and do sell them goods at a profit at the same price that it costs the Madison merchants to deliver the goods at Madison, owing to high rates of freight to Madison." (Record, pp. 32, 33, Case 68.)

H. H. Fitzpatrick, merchant at Madison for eleven years, testifies, in answer to interrogatories 16 and 18:

"Low rates to a locality have a marked effect in increasing the population of the locality and inducing the investment of capital. Capital, ordinarily, will not go to a place where freight rates are high. High rates drive away wholesale merchants from Madison because they can not compete with Atlanta. All mercantile and manufacturing enterprises are more or less dependent for success on the rate of freight to the locality.

"There are about twenty country stores in this county outside of any town or village. By reason of the discrimination in the rate of freight in favor of Atlanta, and against Madison, these stores buy their goods as cheap or cheaper than the merchants of Madison. The Madison merchants can not sell their goods, because they can not compete with Atlanta." (Record, p. 34, Case 68.)

S. A. Turnell, merchant at Madison for fifteen years, testifies in answer to interrogatories 8, 17, and 18:

"The freight rate on first-class freight from all Eastern points to Atlanta is $1.14 per hundred, while the rate to Madison is $1.43. If the goods are left off at Madison the freight is $1.43 per hundred, or if carried

beyond Madison 68 miles to Atlanta the rate is only $1.14 per hundred.

"Relatively high rates to a locality drive away capital and business enterprises. No business enterprise can succeed unless it can compete in prices with other merchants who sell in the territory where the enterprise is located.

"Madison merchants, being unable to compete in prices with Atlanta, can not sell goods to the many country stores in this county. These country stores can buy their goods as cheap as the Madison merchants, and as they have no city taxes to pay their expenses are light. They draw much trade from Madison. If Madison had the same rates as Atlanta, her merchants would sell goods to these country stores, and the trade that is now induced away from us would come back." (Record, pp. 35, 36, Case 68.)

L. J. Aldmand, merchant at Conyers for nine years, testifies, in answer to interrogatories 9 and 18:

"This discrimination" (in favor of Atlanta) "has been going on ten or fifteen years. It has the effect of killing all manufacturing enterprises and jobbing houses (at Conyers, etc.).

"*Manufacturing enterprises have been started in Conyers which have moved away on account of the difference in freight rates against Conyers. H. D. Terrell, manufacturer of plows, moved to Macon on this account.*" (Record, p. 40, Case 68.)

Walter L. Sessions, merchant at Marietta for fifteen years, in answer to interrogatory No. 9, says:

"It" (discrimination in favor of Atlanta) "has had the effect of causing all merchants who desired to do a wholesale business to leave Marietta and other points

around here and go to Atlanta to do business, and has retarded the growth of Marietta by carrying away business and capital, and *has helped to build Atlanta at the expense of Marietta. It has caused some factories to leave here for Atlanta, and a number of our citizens do business at Atlanta and live in Marietta.*" (Record, p. 90, Case 69.)

D. N. Anderson, merchant at Marietta for twenty years, states, in answer to interrogatory 18:

"I am a cotton dealer at Marietta and ship about 6,000 bales of cotton a season. The Western and Atlantic Railroad has been charging me on through cotton through Atlanta 19 cents a hundred, but by shipping to Atlanta and reshipping to the ports I get it at 13 cents a hundred, the commission rate." (Record, p. 92, Case 69.)

J. P. Legg, merchant and cotton buyer at Marietta for twelve years, testifies, in answer to interrogatory 18:

"All we want is equalized freight rates with other localities on the same road. Our natural advantages are good, but we will always be at a disadvantage when goods can be hauled from Cincinnati through Marietta to Atlanta for a less rate of freight than they can be brought to Marietta from the same places." (Record, p. 94, Case 69.)

H. C. Dobbs, merchant at Marietta for eleven years, in answer to interrogatories 8, 9, and 17, states:

"Take nails. Atlanta merchants can buy nails at Cincinnati and haul them to Atlanta through Marietta and reship them back to Marietta and sell them at the same that I can when I buy at the same place and in

carload-lots. They can compete with me here and at points around here just as if they did business in the same town with me, yet Atlanta is 20 miles farther away from Cincinnati than Marietta is.

"It" (discrimination in rates) "has existed ever since I have been in business, and I do not know how much longer; and this has had the effect of retarding the growth of our town. We ought to have a population of from 10,000 to 15,000, while we only have about 5,000. *The discriminating freight rates drive away both capital and population.*

"Relatively high rates to a locality tend to drive away capital and also population, and hinder prosperity. I know of a factory that moved from Marietta to Atlanta, on the line of the same railroad it was already on, because of the big difference of freight rates in favor of Atlanta and against Marietta. A man who wanted to build a factory of any kind would not be apt to go to a place where there were high freight rates if he could find a place where they were very much lower. It is this way with Marietta and Atlanta. One has a high rate, the other a low rate, and it has caused a great many of the citizens of Marietta to move to Atlanta to do business, or to live here and do business in Atlanta." (Record, pp. 94, 95, Case 69.)

James W. Vaughn, merchant at Cartersville for seven years, testifies, in answer to interrogatories 8, 9, and 19:

"First-class rates from New York to Atlanta or Rome is $1.14 per hundred pounds, and to Cartersville $1.38. This difference of 24 cents against us would cover our profit on heavy or staple goods.

"This discrimination against Cartersville in favor of Atlanta and Rome has existed ever since I have lived

in Cartersville, to my certain knowledge. It has retarded the growth of Cartersville and makes it impossible to do a wholesale or jobbing business here.

"It is impossible for a locality to thrive or prosper unless it can share the same through rates as other localities with which it would naturally compete for business. Capital seeking investment would not locate at a point where there is the least discrimination in freight rates against such locality, and for that reason Cartersville has not been successful in inducing the building of or fostering manufacturing enterprises. We can not conduct a wholesale business in any line of manufacture until we secure a lower rate." (Record, pp. 77, 78, Case 69.)

J. W. Knight, merchant at Cartersville for twelve years, in answer to interrogatory 9, states:

This discrimination in rates against Cartersville has existed to my certain knowledge ever since I have been in business here. Merchants here could do no jobbing business; all the trade has had to be purely local, and that always retards the growth of any town." (Record, p. 81, Case 69.)

Thomas Lumpkins, merchant at Cartersville for twelve years, in answer to interrogatories 16 and 19, says:

"My implement and machinery business extends over a large territory. I frequently find that I can ship goods to Cartersville and distribute them with profit, and successfully compete with the merchants of Atlanta, because of the discrimination in rates in favor of Atlanta. This always applies to buggies and wagons. *I have often found it necessary to ship goods to Atlanta in less than carload lots and then reship to Cartersville, and could thereby save freight.*

"Rome and Atlanta having the same freight rate, which is lower than that to Cartersville, and Cartersville being situated between the two, this discrimination in favor of Rome and Atlanta is ruinous to the business of Cartersville. Cartersville being situated in the center of a fine agricultural and mineral region, if it had the same freight rates as Rome and Atlanta the business of Cartersville would be very greatly increased. The property would increase in value, the population would increase, and the town and community generally would be benefited." (Record, p. 80, Case 69.)

J. E. Field, merchant at Cartersville for ten years, testifies, in answer to interrogatory 19:

"There have been several manufacturing enterprises here which have had to close up their business and leave on account of the discrimination in rates against Cartersville. They could not successfully compete with other points which had a lower rate." (Record, p. 84, Case 69.)

In the face of this uncontradicted testimony, counsel for carriers said in his argument before the circuit court: "*Atlanta is benefited. Who is injured? There is no proof of injury to anyone!*"

Discrimination is contrary to natural right, and is abhorrent to the law. The leading feature of the act to regulate commerce is the provision of a remedy for unjust discrimination, and in particular for discrimination as between different localities. In the language, heretofore quoted, of the Supreme Court of the United States in *Union Pacific Company* v. *Goodrich* (149 U.

S., 680), the law was designed to "cut up by the roots the entire system of rebates and discriminations in favor of *particular localities*, special enterprises, and favored corporations."

If discriminations such as are shown by the undisputed evidence in these cases, resulting in material damage and the grossest injustice to shorter distance points, do not fall within the evil intended to be remedied by the act to regulate commerce, then it will be difficult to conceive of a case of discrimination which would come within the purview of that act.

Discriminations which result in the very abuses which the act to regulate commerce was designed to remedy can not be justified under the act.

COMPETITION, NO MATTER HOW FORCEFUL, SHOULD NOT BE HELD TO NULLIFY THE LAW.

Chapter XXIV.

The prejudice to shorter distance points "undue and unreasonable" under section 3 of the law.

It is conceded by counsel for the carriers in his printed argument that section 3 of the law may apply even where section 4 does not.

Section 3 forbids discriminations which result in "*undue prejudice and disadvantage.*"

Can it be held that the "prejudice or disadvantage" to the shorter distance points, shown by the undisputed testimony of merchants at those points *and set forth in the preceding chapter*, is a due and reasonable prejudice or disadvantage under section 3 of the law?

Can it be said that a prejudice or disadvantage is *due and reasonable* in contemplation of the law, which, in the language of S. T. Whittaker, a Westpoint banker, "*has retarded the growth of Westpoint at least 40 per cent, and has simply run all jobbers and wholesale merchants out of the town, and hampered the manufacturing interests to such an extent that new capital will not invest in that line?*"

Can a prejudice or disadvantage be held to be *due and reasonable* in contemplation of the law which, in the language of Fuller E. Calloway, a Lagrange merchant, "*enables the Opelika merchant to ship his goods from New York through Lagrange to Opelika, 38 miles beyond, and then reship them back to Lagrange at 7½ cents per hundred pounds less (on first-class freight) than the Lagrange merchant can ship them direct from New York to Lagrange,*" and which "*enables the Opelika merchants to undersell the Lagrange merchants at their front doors 7½ cents per hundred pounds and make the same profit?*"

Can a prejudice or disadvantage be held to be *due and reasonable* under the law which, as shown by the testimony of L. J. Almond, a merchant at Conyers, Ga., has "*had the effect of killing all manufacturing enterprises and jobbing houses at Conyers*" and has caused "*manufacturing enterprises that have been started in Conyers to move away on account of the difference in freight rates against Conyers?*"

Can a prejudice or disadvantage be said to be *due and reasonable* under the law which, as testified by Walter L. Sessions, a merchant at Marietta, Ga., "*has had the effect of causing all merchants who desire to do a wholesale business to leave Marietta and other points around here and go to Atlanta, and has retarded the growth of*

Marietta by carrying away business and capital, causing some factories to leave Marietta for Atlanta, and thereby building up Atlanta at the expense of Marietta?"

Can a prejudice or disadvantage be held to be *due and reasonable* in contemplation of the law, under which, as testified by James W. Vaughan, a merchant at Cartersville, Ga., "*first-class rates from New York to Atlanta or Rome are $1.14 per hundred pounds, and to Cartersville $1.38, which difference of 24 cents against Cartersville would cover the profit on heavy or staple goods,*" and which "*has retarded the growth of Cartersville, and makes it impossible to do a wholesale or jobbing business there,*" and which, in the language of Thos. Lumpkins, also a merchant of Cartersville, *has made* "*necessary for Cartersville merchants to ship goods to Atlanta in less than carload lots, and then reship to Cartersville, thereby saving freight,*" and which, in the language of J. E. Field, another Cartersville merchant, *has caused several* "*manufacturing enterprises at Cartersville to close up their business and leave on account of the discrimination in rates against Cartersville.*"

If such prejudice and disadvantage can be held to be *due and reasonable under section 3*, what prejudice and disadvantage could be held to be undue and unreasonable?

If such prejudice and disadvantage can be held to be due and reasonable under section 3, what field of

operation has that section, and what abuses was it intended to remedy?

We repeat, as said in the preceding chapter, COMPETITION, NO MATTER HOW FORCEFUL, SHOULD NOT BE HELD TO NULLIFY THE LAW ITSELF.

The act to regulate commerce is on trial for its life in these cases on the charge of total inefficiency. It should not be condemned unless shown to be guilty beyond all reasonable doubt.

Chapter XXV.

MATERIALITY OF PROOF OF INJURY RESULTING FROM DISPARITY OF RATES RECOGNIZED BY THIS COURT IN "IMPORT CASE" (162 U. S., 239).

MATERIALITY OF SUCH PROOF SHOWN BY THE LANGUAGE OF SECTION 3 OF THE LAW.

THE PROOF OF INJURY OR PREJUDICE TO THE SHORTER-DISTANCE POINTS MADE IN THESE CASES DISTINGUISHES THEM FROM THE "SOCIAL CIRCLE CASE" AND ALL THE OTHER CASES UNDER THE ACT TO REGULATE COMMERCE WHICH HAVE BEEN BEFORE THIS COURT.

The proof made (see Chapter XXIII, *supra*) in these cases by merchants at the shorter distance points of the injury or prejudice resulting to them from the discrimination in rates against them and in favor of the longer distance points *is positive and specific and no attempt to controvert it has been made in behalf of the carriers.*

The materiality of such proof is recognized by this court in the "Import case" (*Texas and Pacific Ry. Co.*

v. *The Interstate Commerce Commission*, 162 U. S. 239), where it is said:

"The mere fact that the disparity between the through and the local rates was considerable did not, of itself, warrant the court in finding that such disparity constituted an undue discrimination, much less did it justify the court in finding that the entire difference between the two rates was undue or unreasonable, ESPECIALLY AS THERE WAS NO PERSON, FIRM, OR CORPORATION COMPLAINING THAT HE OR THEY HAD BEEN AGGRIEVED BY SUCH DISPARITY." (The small capitals are mine.) (162 U. S., 239.)

Here is a statement that no claim of injury had been made in the "Import Case," and an emphatic recognition of the materiality of proof of such injury. The court in effect says that while the mere fact of the disparity in rates would not warrant the court "in finding that such disparity constituted undue discrimination," yet that fact, accompanied by proof of injury, might warrant a finding that the injury was "undue."

MATERIALITY OF SUCH PROOF SHOWN BY THE LANGUAGE OF SECTION 3 OF THE LAW.

Section 3 of the law forbids preferences in rates between localities resulting in "*undue or unreasonable prejudice* or *disadvantage*." The words "undue or unreasonable" *ex vie termini* call for measurement or consideration of the *extent* of the injury or prejudice resulting from the discrimination and for proof in relation thereto.

THE PROOF OF INJURY MADE IN THESE CASES DISTINGUISHES THEM FROM, AND RENDERS THEM STRONGER THAN, THE "SOCIAL CIRCLE CASE" OR ANY OTHER CASE UNDER THE ACT TO REGULATE COMMERCE WHICH HAS BEEN PRESENTED TO THIS COURT.

Chapter XXV a.

SOCIAL CIRCLE CASE.

PRESENT CASES STRONGER AGAINST CARRIERS THAN THAT CASE.

DISTINCTIONS BETWEEN SOCIAL CIRCLE CASE AND PRESENT CASES.

NO WATER COMPETITION IN PRESENT CASES.

NO PROOF OF INJURY IN SOCIAL CIRCLE CASE.

In the Social Circle case, the defendant carriers attempted to make the haul to Social Circle *a part through and a part local* haul by charging through rates to Atlanta and a local rate from Atlanta on to Social Circle.

(*Cinti., N. O. & T. P. Ry. Co.*, v. *I. C. C.*, 162 U. S., 184.)

This court held, however, in effect, that a through haul could not thus be converted into *a part through and a part local haul*, but that, the carriage being a continuous carriage, the line to Social Circle was a through line and the rates through rates, and subject to the regulating authority of the courts and Commission under the commerce law.

By the charge of the local rate from Atlanta to Social Circle the through rate to Social Circle was made greater than the rate for the haul through Social Circle on to Augusta. (56 Fed. Rep., p. 925.)

Notwithstanding Social Circle was shown to be a strictly *local* noncompetitive point and Augusta a competive point, the circuit court of appeals and this court held in effect that the higher rate to Social Circle, *thus made higher by the charge of the local rate from Atlanta to Social Circle*, was illegal, and sustained the order of the Commission prohibiting the higher charge to Social Circle than to Augusta.

The present cases stronger against the carriers than was the Social Circle case.

The present cases are distinguished from the Social Circle case in some respects, which render them much stronger cases against the carriers.

(*a*) In the first place, in the present cases through rates to the shorter distance points are named in the bills of lading, and the proof shows that the different lines of transportation "*advertise*," "*solicit*," *and* "*compete* for" business from New York and other Northeastern cities and from Cincinnati to the shorter distance points. *Per contra*, in the Social Circle case the bills of lading only set forth through rates to Atlanta, and

there was no proof that the different lines of transportation advertised, solicited, or competed for business from Cincinnati to Social Circle.

(*b*) In the Social Circle case it was proven that there was *water competition* by ocean and the Savannah River to Augusta. *Per contra*, in the present cases there *can be no valid claim* that there is water competition to either of the longer-distance points, Atlanta or Opelika, to the benefit of which the shorter-distance points are not equally entitled. *They are far inland, and are reached by no navigable stream or body of water.*

In his printed argument, counsel for the carriers states that the "rates from New York and other North Atlantic ports to Augusta and Atlanta are controlled by water competition to and through the ports of Savannah and Brunswick." Can any reason be given why the rates to the points between Augusta and Atlanta are not also controlled by that water competition?

It seems that the influence of this water competition travels on from Augusta to Atlanta through the intermediate shorter-distance points. By what process is it suspended as it passes through Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain on its way to Atlanta?

(c) Another material distinction between the present cases and the Social Circle case is that proof of injury or prejudice resulting from the discrimination has been made in these cases. In the Social Circle case no injury is shown or attempted to be shown. As to the materiality of such proof, see Chapter XXV, *supra*.

In the present cases, as was in effect held by the circuit court to be the fact in the Social Circle case, the higher rates to the shorter distance points are *the result of the charge of local* rates as parts of those rates. If higher rates to Social Circle resulting from this cause were unlawful, then *a fortiori* rates thus made up to the shorter distance points in these cases, which are proven themselves to be competitive points, are unlawful.

Chapter XXVI.

THE INTERESTS OF THE PUBLIC TO BE FIRST CONSIDERED.

WHO ARE THE PUBLIC AND WHAT ARE THE PUBLIC INTERESTS?

MAGNITUDE OF THE PUBLIC INTERESTS AT THE SHORTER-DISTANCE POINTS AND IN THE TERRITORY SURROUNDING THEM.

This court has taken particular pains, in all its decisions holding that competition may justify discrimination, to *safeguard the interests of the public.*

Alabama Midland case (168 U. S., 164).

L. & N. R. R. Co. v. *Behlmer* (175 U. S., 649).

T. & P. Ry. Co. v. *I. C. C.* (162 U. S., 233).

In the "Alabama Midland case" the court holds that "the competition *may* in some cases be such as, having due regard for the *interests of the public* and the carrier, ought justly to have effect upon the rates;" and, in *L. & N. R. R. Co.* v. *Behlmer*, that the right to discriminate is "in every event to be only enjoyed with a due regard to the *interests of the public*, after giving full weight to the benefits to be conferred on

the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered;" and, in *T. & P. Ry. Co.* v. *I. C. C.*, that consideration must be had of the interests of the community at the locality from which the goods are shipped and the interests of the community at the locality to which the goods are shipped, as well as the interests of the carrier.

WHAT ARE THE PUBLIC INTERESTS REFERRED TO?

The words "interests of the public," as used by this court in the "Alabama Midland case" and in the "Behlmer case," and in all the cases, of course refer to *legitimate* interests of all portions of the public affected, and not to interests of certain localities created and fostered by favoritism in rates.

It may be that the interests of Opelika and Atlanta, the longer distance points in these cases, built up by discrimination against surrounding shorter distance competitive points, would be injuriously affected by doing away with the existing preferences in rates in favor of such longer distance points and against such shorter distance points; but this is not a *legitimate* interest which the law was designed to protect; *it is, on the contrary, a wrong which the law was enacted to remedy.*

INTERESTS OF THE PUBLIC TO BE PREFERRED.

It may also be noted that the words "interests of the public" refer to the interests of the communities at the points of shipment and points of destination or consumption of the traffic, *as distinguished from the interests of the carriers.*

As railroads derive their franchises, their very right of existence, from the public, and the *consideration upon which those franchises are given is the promotion of the public good*, the interest of the public should be held to be paramount, and in cases of conflict should be preferred. As said by this court (Mr. Justice Brown delivering the opinion) in *Union Pacific Co.* v. *Goodrich* (149 U. S., 680), the roads are "*bound to deal fairly with the public, upon whose will they are dependent for their corporate existence.*"

Necessity for regulation of railways in the interest of the public.

When railways came into operation they superseded other modes of transportation and obtained a practical *monopoly as to hauls of any length.* They have an absolute monopoly over their own roadbeds, whereas public highways by land and sea are free to all.

It is this monopoly which, both in England and this country, has called for legislation, in the interest of the

public, regulating railways and their charges. In *Attorney-General* v. *B. & D. J. Ry. Co.* (2d English Railway and Canal Cases, pp. 132, 133) the lord chancellor said that the object of Parliament in its several enactments for the regulation of railways and their charges was to prevent "those who should get the monopoly of the carriage of the public from exercising that monopoly to the prejudice of individuals." Our act to regulate commerce *protects localities* as well as individuals (sections 3 and 4, act to regulate commerce).

The primary if not sole object of the act to regulate commerce is the protection of the interests of the public.

RELATIVE MAGNITUDE OF THE PUBLIC INTERESTS INVOLVED AT ATLANTA OR OPELIKA ON THE ONE HAND AND AT THE SHORTER-DISTANCE POINTS ON THE OTHER.

ERROR OF JUDGE NEWMAN IN COMPARING ATLANTA WITH THE SHORTER-DISTANCE POINTS SINGLY.

The circuit court (Judge Newman) makes the mistake of comparing Atlanta with *each* of the localities discriminated against *singly*, and not with the whole of them combined. He says:

"As a matter of general public knowledge, Atlanta is many times as large *as either* of the points on the Western and Atlantic Railroad as to which complaint is made. (Record in Case 69, p. 254.)

In determining the *extent of the public interest* involved as between Atlanta and the localities discriminated against, comparison should be made with the latter *taken together, and not singly.* Atlanta is not "many times as large as" ALL THE localities discriminated against for the 138 miles between Atlanta and Chattanooga, and for the 171 miles between Atlanta and Augusta, and for the 109 miles between Atlanta and Opelika.

The population of Atlanta does not equal that of the territory in which these shorter distance points are located, and the agricultural and mineral resources and commercial possibilities of this territory, *which are now dormant and undeveloped because of discrimination in rates*, are of vastly greater and more far-reaching importance than that of any public interest involved at Atlanta.

Conceding for argument's sake, however, that the public interests concentrated at Atlanta are larger and more important than the public interests involved at all these shorter distance points and the territories surrounding them, and that rates preferential to Atlanta are necessary to perpetuate her supremacy over surrounding localities, does that justify such preferential rates?

In the case of *Henry W. Behlmer* v. *The Louisville and Nashville R. R. Co. et al.* (83 Fed. Rep., 898).

Judge Goff, delivering the opinion of the circuit court of appeals for the fourth circuit, said:

"The appellees contend that the smaller charge for the greater distance is, in this case, of great importance to the city of Charleston" (the longer-distance point), "as well as to the section of country adjacent thereto, as by means thereof the merchants of that city are enabled to build up a trade that otherwise would be lost to them. That may be true, but is not the same argument applicable to Summerville" (the shorter-distance point) "and other interior cities along the lines of the roads operated by the appellees between Charleston and Memphis? *In order to build up one locality we should not tear down many others; and justice to one section should not be purchased at the expense of another.*" (Italics are mine.)

The superiority in population and commercial importance of these longer distance trade centers—Atlanta and Opelika—over each of the shorter distance points, *considered separately*, is largely due to the rate discrimination in favor of the former and against the latter complained of in these cases. There is no *natural reason* for the preeminence of these trade centers in this territory. (See testimony of Mr. Allen Fort in answer to direct interrogatories 9, 10, and 12, record in Case 69, p. 104.)

There should be a distribution of commerce and population, and not a monopoly or centralization at a few favored localities.

If, under a nondiscriminative adjustment of rates, the shorter distance points should draw some commerce and population from the basing points, Atlanta or Opelika, they will only be getting back that of which they have heretofore been unjustly deprived under the existing adjustment of rates.

The increased prosperity of the shorter distance points, however, need not be at the expense of the longer distance basing points. These shorter distance points will have the whole world to draw from, just as is the case with the longer distance basing points.

In the language of Mr. Aldace F. Walker, an eminent railroad authority, the prosperity of the shorter distance points "*would not be at the expense of*" *basing points*, "*but would, in its reflex action and by necessary laws, ultimately work in their favor also.*"

CONTENTION IN BEHALF OF THE COMMISSION.

We contend—

(1) That no *legitimate* interests of Atlanta or Opelika will be injuriously affected by establishing a just relation between the rates to those cities and to shorter distance noncompetitive surrounding points.

(2) That no ultimate loss of revenue will result to the carriers from the establishing of such relation, but that their revenue will be increased by the building up

of the trade and business of the shorter distance points and the consequent increase in tonnage of traffic hauled to those points.

(3) That the loss, if any, to the shipping points, Baltimore, Philadelphia, New York, Boston, and Cincinnati, in trade to Atlanta or Opelika, will be compensated, or more than compensated, by the increase in their trade to the shorter distance points.

IT IS BEYOND QUESTION THAT THE RIGHTFUL INTERESTS OF THE SHORTER DISTANCE POINTS WILL BE PROMOTED.

Chapter XXVII.

SHORTER-DISTANCE POINTS ARE COMPETITIVE POINTS.

IF THE FORCE OF COMPETITION AT LONGER-DISTANCE POINTS IS GREATER THAN AT SHORTER-DISTANCE POINTS, IT IS NOT SO MUCH GREATER AS TO JUSTIFY HIGHER RATES TO THE LATTER THAN TO THE FORMER, BUT AT MOST EQUAL RATES.

We also maintain that the *higher* rates to the shorter-distance points than to the longer-distance points are not justified, because the shorter-distance points are shown to be competitive points as well as the longer-distance points.

On cross-examination all the railroad officials, witnesses for the defendants, testified that all the through lines which can be formed from New York to Opelika and to Atlanta and from Cincinnati to Atlanta can also be formed to the shorter-distance points by combinations with the road or roads on which those shorter-distance points are located; that through rates by these various lines are the same to each of the shorter-distance points; that those through rates are

published, and the agents of the different lines to the shorter-distance points *advertise* for and solicit traffic from New York and other northeastern cities and from Cincinnati to the shorter-distance points in *competition* with each other.

Answers to cross-questions 43–47, record, case 69, page 196.

Answers to cross-questions 48–52, record, case 70, page 150.

Answers to cross-questions 44–48, record, case 68, page 166.

Competitive points are defined to be points for the transportation of traffic to which two or more transportation lines compete. It is immaterial that a locality is situated on only one road, if that road forms connections with lines of carriers which advertise and compete for business to that locality.

It is said, on the part of the carriers, that while there is competition to the shorter distance points, it is less in degree of force than that to the longer distance points, and, therefore, that the higher rates to the shorter distance points are justified. The court is called upon to weigh the two competitions and to ascertain whether the one so far exceeds the other as *not only to overcome the advantage in distance which*

the shorter distance points have over the longer distance points, but also to justify higher rates to the shorter distance points than to the longer distance points.

We insist that the competition at the longer distance points is not so much greater than at the shorter distance points as to justify *higher rates at the shorter distance points, but that at most it should only be held to neutralize the advantage in distance of the shorter distance points and authorize the same rates to the shorter distance points, and not rates higher than to the longer distance points.*

This, as we have shown, has been the effect of competition in trunk-line territory and other sections of the country outside of Southern territory.

Chapter XXVIII.

ORDERS OF THE COMMISSION.

HOW THE ORDERS OF THE COMMISSION MAY BE COMPLIED WITH.

ERRONEOUS ASSUMPTION OF COUNSEL FOR CARRIERS THAT COMPLIANCE WITH THE ORDERS REQUIRES EITHER AN ADVANCE OF THE RATES TO THE LONGER-DISTANCE POINTS OR A REDUCTION OF THE RATES TO THE SHORTER-DISTANCE POINTS TO THE FULL EXTENT OF THE PRESENT DIFFERENCE BETWEEN THOSE RATES.

MAY BE COMPLIED WITH BY A SIMULTANEOUS ADVANCE OF LONGER-DISTANCE RATES AND REDUCTION OF SHORTER-DISTANCE RATES IN CERTAIN PROPORTIONS OF THE PRESENT DIFFERENCE BETWEEN THOSE RATES.

SHOULD BE OBEYED BY REDUCING RATES TO SHORTER-DISTANCE POINTS.

ORDERS JUST AND REASONABLE.

ORDERS ADAPTED TO ENFORCEMENT OF EITHER SECTION 3 OR SECTION 4.

ADMISSION OF COUNSEL FOR CARRIERS ON THIS SUBJECT.

The orders of the Commission, as we have seen, are simply that the rates to the shorter-distance points shall not be higher than the rates to the longer-distance points, and it is left to the discretion of the carriers to comply with these orders by advancing the rates to Atlanta and Opelika or by reducing the rates to the shorter-distance points, or by both such advance and reduction in certain proportions.

The theory of counsel for the carriers, and upon which he framed his interrogatories to his witnesses in these cases, is that the orders of the Commission can only be obeyed by advancing the rates to the longer-distance points or reducing the rates to the shorter-distance points to the *full extent* of the difference now existing between those rates. In answer to interrogatories framed on this assumption, his witnesses gave it as their opinion that such advance of rates to the longer-distance points would divert the traffic from the lines of defendants to other lines, and that such reduction in rates to the shorter-distance points would result in an unreasonable loss of revenue.

It is manifest, however, that this is an erroneous assumption, and that the evidence in answer to interrogatories framed on that assumption is valueless. The rates to the shorter distance points may be made not higher than those to the longer distance points—Atlanta

and Opelika—by reducing the shorter distance rates to the extent of one-fourth, one-third, one-half, two-thirds, or other proportion of the difference between the two sets of rates and simultaneously advancing the rates to Atlanta or Opelika to the extent of three-fourths, two-thirds, one-half, one-third, or other proportion of that difference.

Order should be complied with by reducing rates to shorter distance points.

It would appear, however, that the orders of the Commission should be complied with by reducing the rates to the shorter distance points and not by advancing the rates to the longer distance points. It is proven by witnessess for the carriers—railroad officials—that the rates to the longer distance points are reasonable in themselves, and yield the carriers a *proper* compensation in excess of the cost of service to those points. *An increase of those rates, therefore, would make them yield a compensation in excess of a proper compensation over and above the cost of service, and would, therefore, render them excessive, in violation of section 1 of the law.*

The rates to the shorter distance points, moreover, are shown to be unreasonably high, and should therefore be reduced. If reduced to the level of the rates to the longer distance points, they will yield a rate per ton per mile greater than the rate per ton per mile to

the longer distance points, and if reasonably high when applied to the longer distance points will certainly be not unreasonably low when applied to the shorter distance points.

It will be assumed, therefore, that the order of the Commission should be complied with, not by advancing the rates to the longer distance points, but by reducing he rates to the shorter distance points, so as to make them *at least* not higher than the rates to the longer distance points.

Orders of Commission just and reasonable.

The order of the Commission in the "Chattanooga Case" was of the same character as the orders in the present cases, namely, that the rates to Chattanooga should not be higher than those to Nashville. Judge Severens, in the "Chattanooga Case," in speaking of this order, said: "*It is a just and reasonable order, and as near to the court's sense of justice of the case as any the court could devise.*"

Judge Severens further says:

"If the through rates" (for the longer haul through Chattanooga) "to Nashville afford a fair profit to the carriers, there is substantial ground for contending that the *same* charge for carrying freight from the east to Chattanooga would afford a reasonable profit and would, therefore, be a reasonable charge."

Orders of Commission afford proper remedy under section 3 as well as section 4 of the law.

The order of the Commission, it will be observed, is equally as well adapted to the enforcement of section 3 as to the enforcement of section 4 of the law.

It will not only do away with the higher rates for the shorter hauls than for the longer hauls, *forbidden by section 4*, but also remedy the unjust prejudice or disadvantage to the shorter-distance points resulting from the higher rates to those points, *forbidden by section 3*.

Because of the higher rates to the shorter-distance points than to the longer-distance points, the merchants of the former are unduly prejudiced and placed at an unjust disadvantage in that, as shown by the testimony, merchants at the shorter-distance points are unable to compete on equal terms with Atlanta or Opelika merchants, not only in territory at and immediately around the shorter-distance points, which is naturally tributary to them, but also in territory equidistant from the shorter and longer distance points.

By removing the cause, namely, the higher rates to the shorter distance points, the orders of the Commission will enable merchants at shorter distance points to compete on equal terms in territory naturally tributary to them with merchants at longer distance points, and do

away with the undue prejudice or disadvantage now existing, *thus giving the proper relief under section 3.*

Counsel for the carriers, while contending that the Commission erred in basing its orders, as he alleges it did, on the fourth section of the law only, yet admits that—

"Though the Commission may have erred in basing the orders made by it in these cases on the fourth section, *yet if said orders are lawful under the third section it will be the duty of the court to enforce them.*" (Page 44, printed argument of counsel for defendants filed in circuit court.)

And again he says:

"Though the circumstances and conditions at the longer distance points may be substantially dissimilar from those at the shorter distance points, and though such dissimilarity may take the case out of the operation of the fourth section, the third section remains, and if it can be shown that the disparity in rates constitutes an undue preference of the longer distance points, the orders of the Commission ought to be enforced."

Chapter XXIX.

ORDERS OF THE COMMISSION, CONTINUED.

CRITICISM BY COURT BELOW AND BY COUNSEL FOR CARRIERS THAT DISCRIMINATION MAY BE PRACTICED UNDER THEM.

COMMISSION CAN ONLY APPROXIMATE JUSTICE IN ITS ORDERS. A HALF LOAF IS BETTER THAN NO LOAF.

ORDERS IN THESE CASES OF EXACTLY THE SAME CHARACTER AS ORDER APPROVED BY THIS COURT IN THE "SOCIAL CIRCLE CASE."

ORDERS MAY BE MODIFIED.

The orders of the Commission in these cases do not require or render it necessary that the carrier should make the rates to the shorter distance points *as high* as to the longer distance points, but only that the rates to the shorter distance points *shall not be higher* than to the longer distance points.

These orders are criticised by the court below and by counsel for the carriers in his printed argument because they do not "*enjoin* the carriers from charging as high

compensation to the shorter distance points as to the longer distance points." In other words, they are objected to on the ground that the carriers, if they see proper, may, while complying with the *letter* of the orders, still practice discrimination against the shorter distance points.

If they still practice such discrimination, it will be in pursuance of their own volition and not a necessary or natural incident of obedience to the orders.

Counsel for the carriers, in raising this objection to the orders, confesses that even as high rates to the shorter-distance points as to the longer-distance points are a discrimination.

If this be so, how much greater must be the discrimination under the existing higher rates to the shorter-distance points than to the longer-distance points?

"A half loaf is better than no loaf." Some measure of relief is better than none at all. Even if the orders of the Commission do not compel the carriers to extend to the shorter-distance points the *full measure of relief* due them under section 3 of the law, and the carriers should take advantage of this by exacting as high rates to the shorter-distance points as to the longer-distance points, still the giving to the shorter-distance points rates not higher than those to the longer-distance points will greatly reduce or alleviate the unreasonable

prejudice or disadvantage to which the shorter-distance points are subjected under the present adjustment of rates.

It would be a hard rule, indeed, that would require an order of the Commission to "*possess all the inclusive and exclusive qualities of a plea in abatement*," particularly when it is considered that the Commission, under the construction of the law placed upon it by the courts, is not authorized to prescribe reasonable maximum or minimum rates.

If the Commission had this power to prescribe rates, it could possibly administer *exact* justice, but without this power it can only *approximate* justice. It can be no valid objection to the orders in these cases that they only approximate justice when it is not in the power of the Commission to enforce exact justice.

The orders of the Commission in these cases, even if complied with by leaving the rates to the shorter-distance points *as high* as those to the longer-distance points, will, as we have seen, *approximate justice*, or make rates to the former less prejudicial than they now are. Judge Severens, in the "Chattanooga case," in speaking of an order of the same kind involved in that case, said: "*It is a just and reasonable order, and as near the court's sense of the justice of the case as any the court could devise.*"

The orders in these cases are of the same nature as the order which was sanctioned by this court in the Social Circle Case. The order in the latter case was equally open to the objection that under it rates to the shorter-distance point, Social Circle, might be made as high as to the longer-distance point, Augusta.

In any event, however, as we have hereinbefore shown, the court is required to "do justice," and, in the language of this court in the Alabama Midland Case, is *not* "*restricted to a consideration merely of the power of the Commission to make the particular order in question.*" The court may, therefore, modify the orders of the Commission if necessary to the ends of justice.

Chapter XXX.

ORDERS OF THE COMMISSION CONTINUED.

IMPOSSIBLE TO FRAME AN ORDER THAT WOULD NOT BE SUBJECT TO THE HYPERCRITICISM OF COUNSEL FOR THE CARRIERS.

HYPERCRITICISM SHOULD NOT BE INDULGED; THE ACT TO REGULATE COMMERCE A REMEDIAL STATUTE AND, THEREFORE, TO BE LIBERALLY CONSTRUED.

PREDICTIONS OF EVIL TO RESULT FROM ENFORCEMENT OF ORDER IN THE "SOCIAL CIRCLE CASE" AND OF THE DECREE OF THIS COURT IN THE "TRANS-MISSOURI FREIGHT ASSOCIATION CASE" NOT FULFILLED.

SUCH PREDICTIONS MADE IN ALL CASES.

Counsel for the carriers criticises the orders of the Commission not only on the ground that under them carriers may, if they see proper, still violate the law by indulging in discrimination, *though not to the same extent as now practiced*, but also on the ground that the orders have a *future* operation.

This latter objection is equally applicable to the order of the Commission sanctioned by this court in the "Social Circle case," and no order of the Commission remedying a violation of any of the provisions of the first four sections of the law can be formulated which would not be open to the same objection. They must all have *future* operation or remedy no abuse.

It is beyond the capacity of any human being—even of counsel for the carriers himself—to formulate an order affording any measure of relief, under either one of the first four sections of the law, which could stand the test of the *hypercriticism* applied by him to the orders of the Commission in these cases.

The act to regulate commerce is highly remedial and should be liberally construed with a view to suppressing the mischief and advancing the remedy. Every reasonable intendment should be indulged in favor of and not against the policy of the law. As said by Judge Pardee in the case of *Missouri Pacific Ry. Co.* v. *Texas and Pacific Ry Co.* (31 Fed. Rep., 862):

"Whether in any particular case there is that competition on the long haul that will justify a lower charge for the long haul than is charged for the short haul under otherwise similar circumstances and conditions must be determined on the facts of the particular case, *keeping in mind that, where the matter is not clear, the object and policy of the law should prevail.*"

"I commend the judge," observes Lord Hobart, "who seems fine and ingenious, so it tend to right equity; and I condemn them who, * * * out of pleasure to show a subtle wit, will destroy * * * ." (Broom's Legal Maxims, 8th American ed., p. 80.) The argument of counsel for carriers is "fine and ingenious;" but it does not "tend to right and equity;" it employs "a subtle wit" for the "destruction of the law itself.

If carriers would exercise but a small proportion of the ingenuity they exhibit in raising objections to the orders of the Commission, they would find little trouble in complying with those orders and conforming their rates to the rules of the law without detriment to themselves and with benefit to all *legitimate* public interests.

In the Social Circle case it was contended, as in the present cases, that compliance with the order of the Commission was impracticable and would bankrupt the roads. *The order was complied with, and no such result has followed.*

When this court rendered its decision in *United States* v. *Trans-Missouri Freight Association* (166 U. S., 290), declaring the contract between carriers involved in that case unlawful, there was great commotion in railroad circles throughout the country. The most eminent railroad officials declared that the decision

would injuriously affect, if it did not prove absolutely destructive to, the interests of carriers. *They claim, however, to have conformed to the decision, and no ruinous results have followed.*

"*Where there is a will there is a way.*" If carriers were animated by a desire to conform to the law rather than by a determination to evade it, there would be no difficulty in complying with the orders of the Commission or the decrees of the courts for the enforcement of the law.

Chapter XXXI.

ORDERS OF THE COMMISSION CONTINUED.

ORDERS PRIMA FACIE LAWFUL; BURDEN UPON THE CARRIERS TO SHOW CLEARLY THAT THEY ARE UNLAWFUL.

NOT SUFFICIENT TO RAISE A DOUBT; MUST BE ENFORCED UNLESS CLEARLY ERRONEOUS.

The maxim or rule that all things are to be presumed "to be rightly done until the contrary is made to appear," which is invoked in aid of acts of public officers, tribunals, and administrative boards, performed in the discharge of their duties, applies with equal force to an order of the Interstate Commerce Commission, which is a bureau, tribunal, or administrative board of the Government established by the law of the land, and *whose orders are not ex parte, but the result of judicial investigation.*

TO RAISE A MERE DOUBT OF THE LEGALITY OF THE ORDER NOT SUFFICIENT.

The Commission has made out a *prima facie* case by showing the issuance of its order and its violation, and the burden is thereby shifted to the defendants to show *clearly* to the satisfaction of the court that the order is

unlawful and should not be enforced. *To raise a mere doubt will not be sufficient.* In the case of *Missouri Pacific Railway Company* v. *Texas and Pacific Railway Company* (31 Fed. Rep., 862), Judge Pardee says:

"*Where the matter is not clear*" (that is, where it is not clear that the carrier is justified in a departure from the rule of the fourth section of the law) "*the object and policy of the law should prevail.*"

In *Interstate Commerce Commission* v. *The Louisville and Nashville R. R. Co. et al.*, in which rates from New Orleans to Lagrange, the shorter-distance point, and to Atlanta, the longer-distance point, were involved, the United States circuit court for the southern district of Alabama (Judge Toulmin) says:

"The court is not so clear as to the proposition that the rates from New Orleans to Lagrange are unreasonable and unjust in themselves and relatively so as compared with the rates to Atlanta. * * * But the findings of fact in the report of the Commission are made by law *prima facie* evidence of the matters therein stated, and the conclusions of the Commission based upon such findings are presumed to be well founded and correct, *and they will not be set aside unless error clearly appears.* The record does not clearly show that the Commission's findings and conclusions on this branch of the case are erroneous—are not in accordance with the law and the evidence—and the court should not overrule or in any other manner interfere with them." (102 Fed. Rep., 709.)

Chapter XXXII.

ORDERS OF COMMISSION CONTINUED.

REDUCTION OF RATES TO SHORTER DISTANCE POINTS WILL NOT RESULT IN ULTIMATE LOSS OF REVENUE TO CARRIERS.

SUCH REDUCTION WILL ENLARGE THE BUSINESS AND HENCE INCREASE THE TONNAGE OF TRAFFIC TO SHORTER DISTANCE POINTS.

OPINION TO THAT EFFECT OF THIS COURT IN THE JOINT TRAFFIC ASSOCIATION CASE (171 U. S., 505).

TESTIMONY TO THAT EFFECT OF HON. ALLEN FORT, A MEMBER OF THE GEORGIA RAILROAD COMMISSION.

TESTIMONY TO THAT EFFECT OF MERCHANTS AT SHORTER DISTANCE POINTS.

OPINION TO THAT EFFECT OF ALDACE F. WALKER, CHAIRMAN OF THE BOARD OF EXECUTIVE OFFICERS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM.

ORDERS OF COMMISSION DO NOT AFFECT RATES ON INTRASTATE TRAFFIC, BUT ONLY ON INTERSTATE TRAFFIC.

The main, if not only, objection to compliance with the orders of the Commission by reducing the rates to the shorter distance points is, that it will result in an unreasonable, if not ruinous, loss of revenue to the carriers. The railroad officials, examined as witnesses in behalf of the carriers, expressed the opinion that such will be the result.

These witnesses, however, also express the opinion that a reduction of the rates to the shorter distance points so as to put them in the matter of rates in a position of relative equality with the longer distance points, Atlanta and Opelika, would not increase the business at the shorter distance points and the tonnage of traffic hauled by the roads to those points.

This opinion is given by these witnesses notwithstanding they admitted the well-established fact that Atlanta merchants under the existing adjustment of rates sell goods at Stone Mountain, Conyers, Covington, Social Circle, etc., and in territory around those points in competition with their local merchants, and also at Marietta, Acworth, Cartersville, Kingston, etc., and in territory around those points in competition with their local merchants, and that Opelika merchants sell goods at West Point, Lagrange, etc., and in territory around those points in competition with their local merchants.

This fact is admitted by nearly all the railroad officials examined as witnesses, and is positively testified to by the local merchants at these several points examined as witnesses in behalf of the Commission.

These railroad witnesses also express the opinion that while rates enter into and affect the prices at which merchants can sell their goods, that reducing the rates to the shorter-distance points will not benefit consumers at those points or increase, or tend to increase, the consumption of goods at those points by bringing them within the reach of a greater number of consumers.

These opinions are all contrary to reason and experience, and can only be attributed to the natural bias of these witnesses in favor of the defendants.

These witnesses, as heretofore stated, are the very men who have made and are responsible for the rates to the shorter-distance points. They are naturally strongly biased in favor of their own action, and *when they give their opinion as to the reasonableness of these rates and as to other matters involved in these cases, those opinions are to be viewed and weighed in the light of the fact that they are the opinions of interested parties, naturally strongly biased.*

OPINION OF MR. JUSTICE PECKHAM IN JOINT TRAFFIC ASSOCIATION CASE (171 U. S., 505).

As to the effect of the reduction of the rates to the shorter distance points so as to make them not higher than the rates to their competitors in business, the longer distance points, *in increasing the business and tonnage of traffic to the shorter distance points*, the attention of the court is called to the *opinion of Mr. Justice Peckham* in the case known as "The Joint Traffic Association Case" (171 U. S., 505.) On this point Mr. Justice Peckham says:

"The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by *a larger supply*, the furnishing of which increases commerce. * * * The natural, direct, and immediate effect of competition is, however, *to lower rates and to thereby increase the demand for commodities* the supplying of which increases commerce, and an agreement whose first and direct effect is to prevent this plan of competition restrains instead of promoting trade and commerce."

This proposition—that lower rates increase the demand for articles transported, and consequently *the tonnage of such articles transported*—is the basis of the decision of the court in that case, it being held that the contract or agreement of the Joint Traffic Association under consideration tended to stifle competition and thus maintain high rates, and thereby to restrain interstate commerce *in lessening the tonnage of such commerce*. In other words, the basis of the decision of the

Supreme Court was that the agreement of the association prevented a reduction of rates on interstate commerce, and in so doing *lessened the amount of such commerce which would be transported under low rates.*

Opinion of the Hon. Allen Fort, of the Georgia railroad commission.

The Hon. Allen Fort, railroad commissioner of Georgia, was examined as a witness in behalf of the Commission, and his testimony on this subject is in line with the opinion of the Supreme Court of the United States. He says, in answer to interrogatories 9, 10, and 12 (Record, Case 69, p. 104; Case 68, pp. 53, 54; Case 70, p. 60):

Answer to interrogatory 9. "The geographical positions of Newnan, Grantville, Hogansville, Lagrange, and West Point, and the territory by which they are surrounded, and of Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, and the territory by which they are surrounded, and of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and the territory by which they are surrounded, are such that they are capable of further growth; and if rates from New York and other Eastern cities were not higher to those points"—that is, Newnan, Grantville, etc., and Greensboro, Madison, etc.—"and from Cincinnati to Calhoun, Adairsville, etc., were not higher to those points than rates to Atlanta and Opelika, in my opinion their prosperity would be promoted."

Answer to interrogatory 10. "In my opinion, a reduction in rates from New York and other Eastern cities and from Cincinnati to those stations"—that is, the

shorter distance points—"so as to make said rates not higher than rates charged for the haul through those points to Opelika and to Atlanta, would increase the *tonnage* of traffic hauled by the roads to those points."

Answer to interrogatory 12. "The margin of profit is now so small in commercial transactions that a discriminating rate against a locality makes manufacturing and jobbing unprofitable, and a locality so discriminated against can not hold the trade in its own legitimate territory, but more favored localities secure the trade and are built up at the expense of the less favored."

Testimony on this point of merchants at the shorter distance points.

All the merchants at the shorter distance points who were examined as witnesses for the Commission in these cases testified that their business would be increased, and consequently *the tonnage of traffic hauled to the shorter distance points would be increased*, by giving them rates not higher than the rates to Atlanta or Opelika. (See question 16 and answer thereto, Record, Case 70, pp. 38, 40.)

Opinion of Mr. Aldace F. Walker.

We have heretofore quoted from an opinion of Mr. Aldace F. Walker, then a member of the Interstate Commerce Commission, in which opinion he condemns the practice of combining through and local rates, known as the Southern trade center or basing point system.

Mr. Walker was induced to resign his position as Interstate Commerce Commissioner to accept employment offered him by the railroads. He is now and has been for a long time chairman of the board of general and executive officers of the Atchison, Topeka and Santa Fe Railway system, and has become an authority of great weight in railroad circles. While, however, still a member of the Interstate Commerce Commission, in an opinion rendered by him as a member of that Commission, he forcibly demonstrated that the view of the Supreme Court and others on this subject above quoted was correct, using this strong language:

"*The stimulus given to business at intermediate points*" (*by reduction of rates*) "*will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it.*"

The case in which Mr. Walker expressed these views is entitled *In re Tariffs and Classifications of Atlanta and West Point Railroad, et al.*" (3 I. C. C. R., 48, 49). Below is given at some length, as part of this argument, what Mr. Walker says in reference to this matter:

"The chief obstacle in the way of a general compliance with the rule of the fourth section is found in the question of revenue. Carriers in the *Southern States* employ that argument in every case when conformity to the law is suggested. *They say that the railroads must live or there can* be no commerce by rail, and they

insist that any reduction of rates means loss of revenue, which is against the public interest and the carrier's right, unless the rate in question be unreasonable *per se*. But it is not clear that the application of the general rule of the law would involve permanent loss of revenue. The stimulus given to business at intermediate points will increase traffic largely. *That proposition has been so often practically demonstrated that no intelligent observer can reject it.* Moreover, the adjustment required does not necessarily involve immediate loss of revenue. An advance of a single cent, for example, on the various classes and specials composing the large interstate traffic to and from Atlanta would compensate the carriers for very considerable reductions on the comparatively light interstate traffic which is now carried to local points on the Atlanta combination. * * *

"*At present the amount shipped to intermediate points is relatively very small. Giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industry and enterprises.* Such encouragement would not be at the expense of the coast points, but would, in its reflex action and by necessary laws, ultimately work in their favor also. It is customary for dealers at Baltimore, Philadelphia, New York, and Boston to supply interior towns in their vicinity by sales to customers there located—deliveries being made by the stoppage of cars en route for the terminals—at the same rates charged in case they are carried through. The adoption of such a system in the Southern States would not break up the business of distributing points; the methods would be somewhat changed, but the combinations of credit and acquaintance would maintain existing business relations. The operation of this system in the Eastern, Northern, and Western States, by way of developing local communities, has wrought benefits to the country at large which are obvious to the most superficial observer."

Financial condition of roads will be improved by relatively just rates to shorter-distance points.

The distinguished counsel for the carriers frequently refers to the fact that the financial condition of Southern roads is bad, and that very many of those roads are in the hands of receivers. It thus appears that the present policy of the roads has not been a success financially. *The carriers have tried discrimination and the result is bankruptcy. Let them try fair dealing and conformity to the rules of the law.*

The prosperity of a road must be more dependent on that of stations along its entire line than on the prosperity of a few widely separated trade centers or basing points. The present policy of the Southern roads, under the trade-center or basing-point system, which discriminates against local stations in favor of widely separated trade centers or basing points, can not but be suicidal.

In the *Chattanooga Case* (85 Fed. Rep., 110), it is said:

"The court is very strongly inclined to the belief that *the interests of the carriers* would in the long run be better promoted by adhering more closely to the rules of the statute, and public policy would also be advanced not only in the encouragement which would thus be given to the distribution of commerce and population, but also in extending that *equality of privilege* which it is one of the prime objects of the act to regulate commerce to promote."

In any event, however, the financial results to the carrier of a readjustment of rates so as to make them relatively just as between different localities is not the sole test of the propriety or lawfulness of requiring such readjustment.

The right of the public, and every portion of the public, to reasonable rates is always to be considered as well as the revenue of the carrier. This proposition is laid down and enforced by the Supreme Court in the case of *Covington and Lexington Turnpike Company* v. *Sanford et al.* (164 U. S., 578). In that case Mr. Justice Harlan, in delivering the opinion of this Court, said:

"The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just to the public. * * * The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. * * * So that the right of the public to use the plaintiffs' turnpike upon payment of such tolls *as in view of the nature and value of the services rendered by the company are reasonable*, is an element in the general inquiry whether the rates established by law are unjust and unreasonable."

Orders of Commission do not apply to INTRASTATE *traffic, but only to* INTERSTATE COMPETITIVE *traffic.*

In this printed argument, counsel for the carriers says:

"The Southern roads can no more afford to carry *all their traffic* at the low rate of profit which they are forced to accept at competitive points than a merchant can afford to sell his *entire line* of goods at the same rate of profit which he is forced to accept upon certain staple articles."

This is a *misleading* statement.

The orders of the Commission do not affect *all traffic*. They only apply to *competitive interstate* traffic, and do not affect the rates to be charged by the defendants on *intrastate* traffic.

All the local traffic of the roads, *which, under a healthy and just adjustment of rates between different localities, would constitute the bulk of their traffic*, is not affected and can not be affected by the orders of the Commission.

Chapter XXXIII.

ORDERS OF COMMISSION CONTINUED.

CONTENTION THAT THE COMMISSION FAVORS EQUAL MILEAGE RATES OR THAT ITS ORDERS WILL RESULT IN SUCH RATES—COST OF SERVICE IGNORED BY CARRIERS.

IMPORTANCE OF DISTANCE RECOGNIZED BY CONGRESS.

In his printed argument, counsel for the carriers contends that the Commission favors, or that the enforcement of its order will result in, equal *mileage* rates.

This is a man of straw, also, which counsel for the carriers proceeds to exterminate with great ease. The Commission has not favored in this or in any case equal mileage rates, and the orders of the Commission, that the rates to the shorter-distance points shall not be in excess of those to the longer-distance points, will not result in equal *mileage* rates except by the voluntary action of the carriers.

If enforced, by leaving the rates to the shorter-distance points as high as the rates to the longer-distance points, the order will result in much higher *mileage* rates to the former than to the latter.

The Commission, so far from favoring equal *mileage* rates, has always expressly held to the contrary, and has sustained the well-established rule recognized by all carriers that *while the aggregate rates increase as the length of the haul increases, the rates per ton per mile decrease as the length of the haul increases.* On this point the Commission says, in *McMorran et al. v. Grand Trunk Railway Company of Canada et al.* (3 I. C. C. R., 252), that—

"Unless there be exceptional conditions which modify the rule, the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases with the greater distance;" and that "through rates *are not required to be made on the mileage basis*, but mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges."

This position of the Commission is conservative and manifestly correct, and nothing even squinting at *equal* mileage rates can be found in any ruling or decision or order of the Commission.

As to the importance of distance, as it affects the COST OF THE SERVICE of transportation and also *the fixed charges, see Chapter XIII of this argument.*

COST OF SERVICE IGNORED.

Counsel for the carriers contends, however, that neither the *cost of service* nor anything else except com-

petition has anything to do with rates to competitive points; that, in fact, traffic managers do not make the rates to competitive points, but that, to use his language, "they are fixed inexorably and absolutely by competition."

Perhaps, if carriers would pay some attention to *cost of service*, there would be fewer cases of receiverships and bankruptcy among them.

Inasmuch as their contention is that the bulk of their traffic is competitive traffic, and that in making rates on this traffic *they ignore cost of service*, the presumption is legitimate that the alleged inadequate returns from their business as a whole is directly *attributable to the fact that they do not take into account cost of service.*

CONGRESS RECOGNIZES IMPORTANCE OF DISTANCE AS A FACTOR IN RATE MAKING.

It may here be again noted that Congress has expressly recognized and enforced the importance of *distance* as a factor in rate making by forbidding, in section 4 of the law, the greater charge for the shorter than the longer *distance.*

Chapter XXXIV.

EQUALITY OF RIGHT AND EQUALITY OF PRIVILEGE AS DISTINGUISHED FROM ABSOLUTE EQUALITY OF RATES.

EQUALITY OF RIGHTS, AND NOT ABSOLUTE EQUALITY OF RATES, IS CLAIMED FOR THE SHORTER-DISTANCE POINTS IN THESE CASES.

In his printed argument in these cases, counsel for the carriers contends in effect that Judge Severens holds in the Chattanooga case that there must be *absolute equality* of charges, and in support of this makes certain quotations from the opinion of Judge Severens in which he speaks of "the *equality* which the commerce act was enacted to secure" and of "such *unequal* charges" as had been made in that case. Counsel for the carrier then proceeds to demolish this man of straw of his own creation by demonstrating that *absolute* equality of charges to different localities is impracticable.

That Judge Severens did not mean *absolute equality* of rates to different localities is manifest from the following extract from his opinion:

"And public policy would also be advanced by the opposite course, not only in the encouragement which

would thus be given to the distribution of commerce and population, but also in extending that *equality of privilege* which it is one of the prime objects of legislation to promote."

When Judge Severens speaks of "the equality which the commerce act was enacted to secure," he means "equality of privilege;" and when he uses the words "equality of privilege" he uses them in the same sense in which this court uses the words "equality of right" in the following quotation from its opinion in *Interstate Commerce Commission* v. *Cincinnati, New Orleans and Texas Pacific Railway Company* (167 U. S., bottom p. 506):

"And with this knowledge it" (the Commission) "is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that EQUALITY OF RIGHT, which is the great purpose of the interstate commerce act, shall be secured to all shippers."

It might as well be said that this court, in using the words "*equality of right*," meant absolute equality of rates, as that Judge Severens, in the language used by him, meant such absolute equality.

It has been well said "that this Government is a government based upon *equality of right* and *not upon equality of condition*."

What is meant in this connection by "equality of right" and "equality of privilege" is, simply, that each individual or locality has an equal right to the enjoyment of his or its natural advantages *unhandicapped by discriminations in rates in favor of competitors.*

We adopt as part of our argument in these cases the following extract from the opinion of Judge Deady in *Ex parte Koehler* (31 Fed. Rep., 268), also quoted by counsel for carriers:

"As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give to each one an *even chance and a fair show to make the most of his or its opportunities*, and to leave the result to circumstances over which it has little, if any, direct control." (Judge Deady, 31 Fed. Rep., 321.)

All we ask is that the shorter distance points in these cases shall, in the language of Judge Deady, have an "EVEN CHANCE AND A FAIR SHOW TO MAKE THE MOST OF THEIR OPPORTUNITIES," unhandicapped by rate discrimination in favor of their competitors.

The language of Judge Severens, which counsel for the carriers criticises so severely, is not so strong as that of this court in *Union Pacific Company* v. *Goodridge* (149 U. S., 690). In that case this court says that carriers, "deriving their franchises from the legis-

lature and depending upon the will of the people for their very existence, are bound to deal fairly with the public * * * and to put all their patrons upon an *absolute equality*."

Chapter XXXV.

BURDEN OF PROOF :

WHEN PREFERENCES ARE SHOWN UNDER SECTION 3 AND THE GREATER CHARGE FOR THE SHORTER THAN THE LONGER HAUL UNDER SECTION 4 OF THE LAW, THE BURDEN IS UPON THE CARRIER TO PROVE A SUBSTANTIAL DISSIMILARITY OF CIRCUMSTANCES AND CONDITIONS.

UNDER SECTION 1 WHEN RATES ARE CHARGED TO BE EXCESSIVE.

CHARGES THAT RATES ARE UNLAWFUL UNDER SECTIONS 3 AND 4 INVOLVE THE REASONABLENESS OF THE RATES UNDER SECTION 1.

IF BURDEN WAS ON THE COMPLAINANT TO SHOW THE EXCESSIVENESS OF THE RATES TO THE SHORTER DISTANCE POINTS, IT HAS BEEN SHIFTED TO THE CARRIERS.

BURDEN UPON CARRIERS TO PROVE MATTERS THE KNOWLEDGE OF WHICH IS PECULIARLY IN THEIR POSSESSION.

Burden of proof under sections 3 and 4 on the carrier to show a substantial dissimilarity of circumstances and conditions.

Section 4 of the law declares the greater charge for the shorter than the longer haul to be unlawful where the transportation to the shorter and the longer distance points is conducted under a "substantial similarity of circumstances and conditions." These words, "substantial similarity of circumstances and conditions," are not in section 3, but this court has held that the preferences in rates mentioned in that section become undue or unlawful when the transportation is conducted under "substantially similar circumstances and conditions."

It was admitted at the hearing below by counsel for the carriers that where the rates to the shorter distance points are higher than to the longer distance points the burden of proof is upon the carrier to show that the higher rates to the shorter distance points are justified by "a substantial dissimilarity of circumstances and conditions."

The same is true as to a charge under section 3 that rates are "discriminative in their nature," or, as those words are applied in the present case, unduly preferential to one locality over another. When discrimination in rates between different localities is shown, the *prima facie* presumption is that it is unjust discrimination and the burden is upon the carrier to show that the transportation to the localities affected is conducted

under "substantially dissimilar circumstances and conditions," and is therefore authorized under the law.

Departures from the long and short haul rule of section 4 are, as heretofore noted, only a species of discrimination between localities, which are embraced in and would have been unlawful under section 3, although not specifically denounced in section 4. As said by Judge Severens in the case of the Interstate Commerce Commission against the East Tennessee, Virginia and Georgia Railroad Company et al., known as the *Chattanooga Case* (85 Fed. Rep., 110)—

The long and short haul clause of section 4 is only one of the *specific* provisions employed for the general purpose of the act. The third section underlies the fourth and supplies the principles on which it rests."

BURDEN OF PROOF WHERE RATES ARE CHARGED TO BE EXCESSIVE. BURDEN SHIFTED TO CARRIERS.

Counsel for the carriers insists, and also states that the Commission has held, that the burden of proof is on the party *alleging the excessiveness of rates under section 1.*

(1) Conceding this to be true, *where the proceeding is under section 1 alone*, the question is presented, whether that burden has not been shifted from the complainant to the defendant carriers in these cases. In Wharton's

Law of Evidence (sec. 367, 3d ed.) it is said "that where a creditor shows facts that raise a *strong presumption* of fraud in a conveyance made by his debtor, the history of which is necessarily known to the debtor only, the burden of proof lies on the debtor to explain it."

We insist that the facts in evidence and upon which we have commented at length in the preceding parts of this argument (see chapter *supra*) raise at least a "strong presumption" of the excessiveness of the rates to the shorter-distance points, and that those facts are sufficient to shift the burden of proof. That presumption being raised, the burden is upon the carriers to rebut it by proof of facts *the knowledge of which is peculiarly in their possession*, to wit, such facts as the original cost of building their roads or the present value of their roads and of their outfit, etc., and a reasonable interest thereon, etc.

The complainant has compared the rates to the shorter and longer distance points, respectively, with a view of showing that the rates to the former are excessive, and in this has the sanction of *common sense*, and also the *judicial* sanction of the court in the "Chattanooga case," in which it is said, as heretofore quoted, that—

"The charges accepted for the longer haul may be referred to for the purpose of considering the reason-

ableness of the charges made for the shorter haul. Such comparisons are applied to every other kind of business, * * * the presumption always being that the compensation charged for the services or thing is sufficient to be reasonable." (85 Fed. Rep., 110.)

The complainant has made actual proof by railroad officials, witnesses for the carriers, that the rates to the longer-distance points yield a "*reasonable* or *proper remuneration* or *compensation*" in excess of the cost of service and a "*sufficient revenue*" in excess of that cost. (Chapter X.)

The complainant has introduced in evidence the *average receipts per ton* per mile on traffic in general and the *estimated cost of carrying 1 ton 1 mile* on such traffic, as reported under the law to the Commission by leading carriers throughout the country, among whom are most of the principal defendants in these cases, and also the averages of the rates per ton per mile of the defendants to all the shorter distance points—which latter averages appear to be from two to six times as high as said average receipts per ton per mile and from three to eight times as high as said estimated cost of carrying 1 ton 1 mile. (Chapter XV.)

The complainant has also made proof of the fact that the rates in question in these cases to the shorter distance points are *composed in part of local rates established for strictly local hauls*, and has further shown that those local rates were fixed with a view of covering

the extra expense of local hauls, and has further proven that the hauls to the shorter distance points are through hauls, and that no part of them are local hauls. (Chapter XVI.)

The charge of local rates, as heretofore shown, where the hauls are not local and the extra expense incident to local hauls is not incurred, nor the extra services incident to those hauls rendered, is *prima facie* excessive, and has been so held in the case of *Augusta Southern R. R. Co.* v. *Wrightville and Tennille R. R. Co.* (74 Fed. Rep., 527).

All of these matters certainly raise a presumption, at least, of the excessiveness of the rates to the shorter distance points, and place the onus upon the carriers of rebutting that presumption.

(2) Where, however, there are *charges under sections 3 and 4* of undue preferences in rates as between localities, the reasonableness in themselves of the rates to the localities alleged to be discriminated against is pertinent or material to the issue presented by such charges. For example, if the rates to one locality are excessive and to another reasonable, this alone would constitute an undue preference in rates.

RULE AS TO BURDEN OF PROOF LAID DOWN BY COMMISSION.

BURDEN OF PROOF WHEN THE KNOWLEDGE OF THE JUSTIFYING CIRCUMSTANCES IS PECULIARLY IN THE POSSESSION OF THE CARRIERS.

The Commission laid down the correct rule as to burden of proof in the case of *McMorran* v. *Grand Trunk Railway of Canada* (3 I. C. C. R., 261) as follows:

"When a rate is *prima facie* disproportionate or relatively unequal, the *onus* is on the carrier to justify its charges when challenged on these grounds. *The knowledge of the justifying circumstances and conditions relied on is peculiarly in the possession of the carrier.*"

In that case the Commission further says in this connection:

"The evidence does not show with any precision what these several expenses" (terminal expenses) "are, either in the aggregate or what would be a fair distribution of them per carload or per hundred pounds of freight. The defendants assume in their brief that the *burden* of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers *a difficult and onerous rule of evidence*. It would be impossible for the petitioners to show such facts otherwise than by the *defendants' agents*, and it was clearly the province of the defendants to make them appear."

The rule that the burden is on a party to prove what is peculiarly in his knowledge, whether the proposition be affirmative or negative, is elementary law, and is laid down by all text writers on the subject.

Section 367, 3d ed., Wharton on "Law of Evidence."

Section 79, 15th ed., "Greenleaf on Evidence."

COUNSEL FOR THE CARRIERS PRACTICALLY ADMITTED THAT THE BURDEN WAS UPON HIM TO PROVE THE REASONABLENESS OF THE RATES TO THE SHORTER DISTANCE POINTS.

Counsel for the carriers, realizing that the burden was upon him, under sections 3 and 4, if not under section 1, of proving that the rates to the shorter distance points in these cases were reasonable in themselves, assumed that burden and endeavored to make the proof.

The testimony which he introduced for that purpose is set forth and commented upon in the following Chapter XXXVI of this argument.

Chapter XXXVI.

NATURE OF TESTIMONY INTRODUCED BY COUNSEL FOR THE CARRIERS TO SHOW REASONABLENESS OF RATES TO SHORTER DISTANCE POINTS.

OPINIONS OF BIASED RAILWAY OFFICIALS RELIED UPON.

GROUNDS GIVEN BY THEM FOR THEIR OPINIONS ON THIS SUBJECT.

As stated in the preceding chapter, counsel for the carriers has assumed the burden of proving the reasonableness of the rates to the shorter distance points.

For this purpose he asked all of his witnesses the following question:

Question 8. "State whether or not the rates from New York, Philadelphia, and Boston via Charleston, Augusta, and Atlanta to Newnan, Grantville, Hogansville, Lagrange, and West Point are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express." (Record, Case 70, bottom p. 68.)

This question was propounded to Mr. J. M. Culp, traffic manager of the Southern Railway, and the other

railway officials, witnesses in Case 70, and also in Cases 68 and 69. These witnesses in all three cases gave substantially the same answer. The answer of J. M. Culp is as follows:

"They are not unreasonably high, and therefore are just and reasonable to the shipper or consignee. The rates are lower than by another known mode of conveyance. Business is done, and has been done, under these rates profitably to the shippers. The rates to these points are subject to competition as far as Atlanta, and from that point the traffic is charged at no higher rate than the rates fixed by the Georgia railroad commission. The rates are relatively adjusted with respect to rates to points similarly situated in other parts of the same section of the country." (Record, Case 70, bottom p. 6, top p. 69.)

It will be observed that there are *five reasons* given for the witness's opinion that the rates to the shorter distance points are reasonable.

(1) BEGGING THE QUESTION.

The *first* reason assigned is that the rates to the shorter distance points "are not unreasonably high, and therefore are just and reasonable to the shipper or consignee." This, it will be observed, is "*begging the question*," the question being whether or not the rates are unreasonably high.

(2) RATES REASONABLE BECAUSE LOWER THAN WAGON RATES.

The *second* reason given is that "the rates are lower than by any other known mode of conveyance." On cross-examination other witnesses who had given the same reason stated that the other mode of conveyance referred to was conveyance by wagons and teams. It needs no argument to show that the fact that rail rates are less than wagon rates is no proof of the reasonableness of the former. There is no analogy between the two, and such a comparison is absolutely valueless. Railroads extend thousands of miles and haul thousands of tons of traffic where a wagon line would run a few miles and haul a few hundred pounds of traffic.

(3) RATES REASONABLE BECAUSE NOT PROHIBITORY.

The *third* reason given is that "business is done . . . has been done under these rates profitably to the shippers." This simply amounts to a statement that traffic has moved under the rates—in other words, that they are not prohibitory. This is manifestly no proof of the reasonableness of rates. *Traffic may move under rates which are excessive, and that, too, with profit to the shippers.*

On cross-examination all of these witnesses stated that they would consider rates reasonable under which "the *traffic would move* and not be diverted to other lines." (Record, Case 69, top p. 166; Case 68, p. 156; Case 70, p. 105.)

This shows the *principle* or true *inwardness* of rate making by carriers. A rate under which traffic will not move is prohibitory, and therefore the opinion of these railroad officials is that any rate is reasonable which is not *prohibitory*.

There is always a *wide margin* betweeen a rate reasonably remunerative to the carrier and a rate under which traffic will not move, or, in other words, a prohibitory rate. *Traffic will move under excessive rates.* (See Chapter ——.) Shippers or consignees are entitled to rates which yield the carrier only a reasonable compensation, and carriers are entitled to no higher rates.

(4) RATES REASONABLE BECAUSE MADE UP OF COMPETITIVE RATES TO LONGER DISTANCE POINT PLUS LOCAL RATE FIXED BY GEORGIA RAILROAD COMMISSION FROM LONGER DISTANCE POINT TO SHORTER DISTANCE POINT.

The *fourth* reason assigned is that the rates to the shorter-distance points "are subject to competiton as far as Atlanta, and from that point the traffic is charged at no higher rate than the rates fixed by the Georgia railroad commission." As we have seen, the fact that parts of these rates are rates fixed by the Georgia railroad commission for local hauls is *prima facie* evidence of the excessiveness of those rates, and not of their

reasonableness. Shorter-distance points are not benefited in their competition with longer-distance points by competitive rates to the latter.

Moreover, as heretofore shown, where the basing point is the longer distance point, this rate so made up embraces compensation for two hauls not in fact made.

(5) RATES REASONABLE BECAUSE OF THEIR "RELATIVE ADJUSTMENT" WITH RESPECT TO RATES, WHICH ARE NOT THEMSELVES PROVEN TO BE REASONABLE.

The *fifth* reason assigned is that "the rates are relatively adjusted with respect to rates to points similarly situated in other parts of the same section of the country." This assumes that the rates to points similarly situated in other sections of the country are themselves reasonable.

Neither "the points similarly situated" nor the rates to those points are given. It is, therefore, impossible to institute a comparison.

These are the reasons given by all the witnesses for the carriers for the opinion that the rates to the shorter distance points are reasonable, and we submit they are wholly insufficient.

At the hearing counsel for the carriers laid great stress upon the fact that the Commission had not intro-

duced proof of the cost of building the roads, and other matters, the knowledge of which is peculiarly in the possession of the carriers. He, however, has wholly ignored the rule which he insists should be enforced as against the complainant. He has introduced no such proof, although it lies peculiarly in the knowledge of his clients.

Chapter XXXVII.

OPINIONS AS EVIDENCE OF MATTERS IN ISSUE. GENERAL RULE THAT THEY ARE NOT ADMISSIBLE.

OPINIONS OF RAILWAY OFFICIALS AS TO THE REASONABLENESS OF THE RATES TO THE SHORTER DISTANCE POINTS, IF ADMISSIBLE, ENTITLED TO LITTLE OR NO WEIGHT, BECAUSE:

(1) THE GROUNDS GIVEN FOR THOSE OPINIONS ARE INSUFFICIENT.

(2) THEY ARE THE OPINIONS OF BIASED WITNESSES.

As we have shown, the reasonableness of the rates to the shorter distance points was one of the matters in issue before the Commission and is now in issue before the courts. The *general rule* of law is that the triers of matters in dispute—the judge or jury, as the case may be—are called upon to form their conclusions from the *facts* before them, and *not upon the opinions* of witnesses.

It may be conceded, however, *for argument's sake*, that the opinions of traffic managers and other rail-

road officials in reference to rates and matters relating to railway management are exceptions to this general rule, and that such opinions are admissible as the opinions of experts even as to the matter in issue.

(Lawson on Expert and Opinion Evidence, 2d ed., pp. 1–3.)

But, if *thus admissible*, the opinions given in these cases are entitled to little or no weight, because, *first*, as we have shown, the reasons given by the witnesses for those opinions are wholly insufficient; and, *secondly*, they are the opinions of witnesses *subject to strong bias*.

These witnesses are the very men who have made and are responsible for the rates to the shorter-distance points. They are naturally strongly biased in favor of their own action, and *when they give their opinion as to the reasonableness of these rates and as to other matters involved in these cases, those opinions are to be viewed and weighed in the light of the fact that they are the opinions of interested parties, naturally strongly biased.*

We do not intimate that these witnesses are *dishonest*, as asserted at the hearing below by counsel for the defendants, but only that they are *human* (not divine) and subject to the human infirmity of bias. The law recognizes this human weakness and allows the fact of interest of a witness to be given in evidence and considered by juries.

As said by the court in the *Chattanooga Case* (85 Fed. Rep., 110), "there is in this no impeachment of the integrity of anyone. It is not a question of *intention*, but whether the thing done is in contravention of the statute."

O

L. A. Shaver,
Sol. for Appellant.
James M. Beck.

No. 68, 69 & 70.

NOV 14 1900
JAMES H. McKENNEY,
Clerk.

Reply Br. of Shaver for Appt.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

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In Equity, No. 68.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

v.

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD AND BANKING COMPANY, ET AL., APPELLEES.

In Equity, No. 69.

SAME

v.

THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL., APPELLEES.

In Equity, No. 70.

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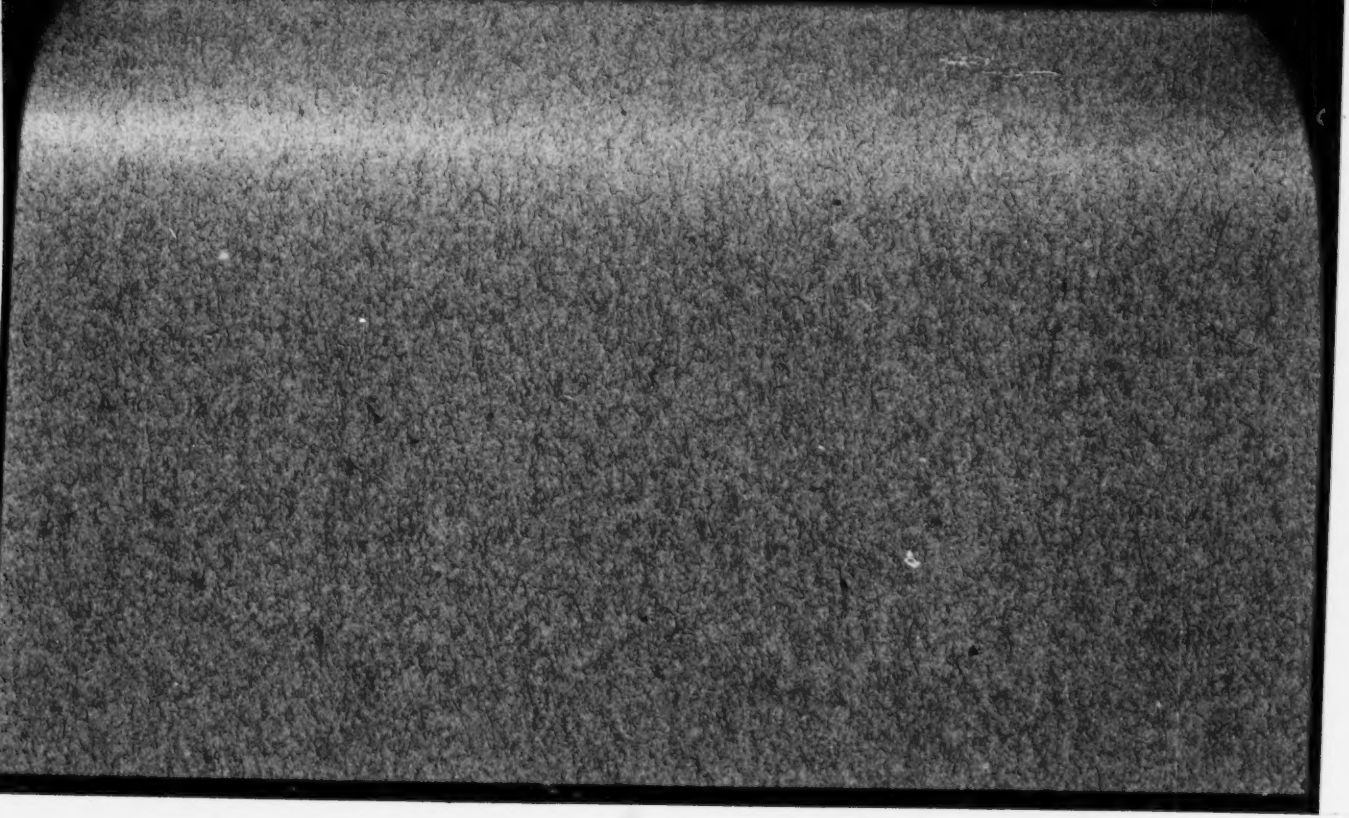
v.

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA AND WEST POINT RAILROAD COMPANY, ET AL., APPELLEES.

REPLY ARGUMENT FOR THE APPELLANT.

L. A. SHAVER,
Solicitor.



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I.

1.

ORDERS OF COMMISSION CRITICISED ON THE GROUND THAT UNDER THEM THE CARRIERS MAY PRACTICE DISCRIMINATION TO THE EXTENT OF MAKING SHORTER DISTANCE RATES AS HIGH AS LONGER DISTANCE RATES.

It is urged as a ground for not enforcing the orders of the Commission that they simply prohibit the charging of higher rates to the shorter than to the longer distance points, and that, therefore, the carriers may still practice discrimination under them to the extent of making the shorter distance rates as high as the longer distance rates.

2.

THIS CRITICISM IS EQUALLY AS APPLICABLE TO THE LAW ITSELF AS TO THE ORDERS OF THE COMMISSION.

Section 4 of the law simply forbids *the greater charge for the shorter than the longer haul.* It does not expressly forbid *as high a charge for the shorter as for the longer haul.* Therefore, under section 4 the carrier may charge as high a rate for a shorter as for a longer haul.

The orders of the Commission in these cases pursue the language of the statute in simply prohibiting the greater charge for the shorter than the longer haul.

3.

THE COMMISSION'S ORDERS ARE CONSISTENT WITH THE VIEW THAT THE FORCE OF COMPETITION IS SOMEWHAT GREATER AT ATLANTA AND OPELIKA THAN AT THE SHORTER-DISTANCE POINTS.

One answer to the plea of competition, maintained before the court in our oral argument, was that, conceding for argument's sake the force of competition is greater at Atlanta and Opelika than at the shorter distance points, still, inasmuch as the latter points are admitted to be competitive points themselves, the force of competition at the former is not so much greater than at the latter as to justify *higher rates* to the latter, and that leaving the shorter distance rates *as high as* the longer distance rates will be making due allowance for any greater force of competition at Atlanta and Opelika than at the shorter distance points shown by the testimony in these cases.

The orders are consistent with this view.

4.

THE ORDERS OF THE COMMISSION, IF COMPLIED WITH BY LEAVING THE SHORTER DISTANCE RATES AS HIGH AS THE LONGER DISTANCE RATES, WILL DO AWAY WITH THE DISCRIMINATIONS AGAINST THE SHORTER DISTANCE POINTS, AND AFFORD RELIEF UNDER SECTION 3 OF THE LAW, AS WELL AS UNDER SECTION 4.

If the rates to the shorter distance points are made not higher than the rates to the longer distance points, this will do away with the unjust or undue prejudice or disadvantage to the shorter distance points shown to be the result of the *higher* rates to those points than to the longer distance points.

For example, the rate on class 1 goods from New York for the haul through Social Circle to Atlanta is $1.14 per hundred pounds. If the Social Circle rate is made the same, $1.14 per hundred pounds, Atlanta merchants *can not* lay down at Social Circle goods originally shipped from New York at the same aggregate rate as that on which the Social Circle merchant could place them there. The Atlanta merchant would have to pay the $1.14 rate to Atlanta plus the local rate of 30 cents back to Social Circle, whereas the Social Circle merchant would only pay the $1.14 rate.

As to *intermediate territory*—that is, territory between Social Circle and Atlanta—the Social Circle merchant having the same rate as the Atlanta merchant, could sell goods at a point *halfway between Social Circle and Atlanta* on terms of equality with the Atlanta merchant so far as rates are concerned, and would have the advantage over the Atlanta merchant in territory between *Social Circle* and the halfway point. The Atlanta merchant, on the other hand, would have the advantage over the Social Circle merchant in the territory between *Atlanta* and the halfway point. *This is just as it should be* and is illustrated by the following diagram:

Rate from New York to Atlanta	$1.14
Rate from New York to Social Circle	1.14
Rate from both Atlanta and Social Circle to intermediate halfway point	.15
Rate on reshipment from Social Circle	1.14+15=1.29
Rate on reshipment from Atlanta	1.14+15=1.29

Giving the shorter distance points rates the same as those to the longer distance points will therefore afford relief under section 3 as well as under section 4 of the law.

5.

THE ORDERS IN THESE CASES ARE THE SAME AS THE ORDER IN THE "SOCIAL CIRCLE CASE," APPROVED BY THIS COURT AND THE CIRCUIT COURT OF APPEALS, AND AS THE ORDER IN THE "CHATTANOOGA CASE," APPROVED BY THE CIRCUIT COURT AND CIRCUIT COURT OF APPEALS.

The order of the Commission in the "Social Circle Case" (162 U. S., 184), approved by the circuit court of appeals and by this court, was the same as the orders in the present cases, namely, that the rates to Social Circle should not be made higher than the rates to Augusta.

The order of the Commission in the "Chattanooga case" (argued and submitted at the last term) was also the same as the order in the present cases. In that case the Commission ordered that the rates to Chattanooga should not be higher than the rates for the longer haul through Chattanooga 151 miles on to Nashville. This order has been approved by the circuit court, Judge Severens rendering the decision, and by the circuit court of appeals for the sixth circuit, presided over by Mr. Justice Harlan and Circuit Judges, Taft and Lurton. Judge Severens, speaking of the order in the "Chattanooga case," says: "*It is a just and reasonable order and as near to the court's sense of the justice of the case as any the court could devise.*"

We have also a precedent for the orders in the present cases in trunk-line territory, where the rates to shorter distance points are sometimes made *as high as* the rates to longer distance points.

6.

COMMISSION HAS NO POWER TO PRESCRIBE RATES; THEREFORE CAN ONLY APPROXIMATE JUSTICE IN ITS ORDERS.

It is settled by this court that the Commission has no power to prescribe rates "maximum, minimum, or absolute." Therefore it can only approximate justice in its orders. As said by Judge Severens in the opinion of the circuit court in the "Chattanooga case," the Commission can only forbid the "continuance of an unlawful practice."

If the Commission were of the opinion that the shorter distance rates in a given case should be lower than the longer distance rates, it could only so order, and *could not prescribe the lower rates.* The carrier might comply with such an order by making its rates to the shorter distance point a *thousandth part of a cent* lower than to the longer distance point. This would be practically leaving the shorter distance rates as high as the longer distance rates.

II.

1.

CONTENTION OF COUNSEL FOR THE CARRIERS THAT MERCHANTS AT SHORTER DISTANCE POINTS CAN PLACE THEMSELVES ON AN EQUALITY WITH MERCHANTS AT LONGER DISTANCE BASING POINTS OR TRADE CENTERS BY SHIPPING THEIR GOODS DIRECT TO THE LATTER.

Counsel for the carriers in his oral argument contended that merchants at shorter distance points could ship goods through to the longer distance points direct at the same rates as merchants at such longer distance points would have to pay, and that, therefore, the former are placed on a basis of equality with the latter at the longer distance points and in intermediate territory.

This is equivalent to saying that the merchant at the shorter distance point can place himself on terms of equality with the merchant at the longer distance basing point by shipping goods *by his own door* to the longer distance basing point and distributing them from that point; *in other words, by transferring his business to the longer distance basing point.*

The merchants at the basing points can accumulate supplies of goods at those points and *reship* them to surrounding localities, and undersell at such localities the merchants at the shorter distance points, if the latter should undertake to make such *reshipments from their own places of business* at the shorter distance points.

We think the fallacy of the contention of counsel for the carriers is too plain for argument.

III.

1.

THE "EXCRESCENCE" ON OUR DIAGRAM IS ALSO AN "EXCRESCENCE" ON THE RATE.

We exhibited before the court the following diagram, illustrating the combination of the through rate from New York to Atlanta with the high local back to Social Circle as the through rate on a shipment from New York to Social Circle *direct*.

The large line underneath the small line between Atlanta and Social Circle represents the high local rate charged as a part of the through rate on goods shipped from New York to and *delivered at* Social Circle.

2.

Counsel for the carriers in his oral argument pronounced this large line an "*excrescence*," and it seemed to shock his esthetic sense. An "excrescence" is defined to be "*an unnatural outgrowth or addition.*" In this sense the high local rate from Atlanta to Social Circle, charged as a part of the through rate on goods shipped from New York to and delivered at Social Circle, *is an excrescence* on the Social Circle rate, and *should shock the moral sense of counsel for the carriers more than making it a part of the diagram seemed to shock his esthetic sense.*

IV.

THE PRESENT CASES STRONGER AGAINST THE CARRIERS THAN THE SOCIAL CIRCLE CASE.

ADDITIONAL DISTINCTION BETWEEN THE LATTER AND THE PRESENT CASES.

1.

In addition to the distinctions between the Social Circle Case (162 U. S., 184) and the present cases, *pointed out in our original printed argument* (pp. 178–181), there is another material distinction between that case and the status of Social Circle in case No. 68 now under consideration and of other localities in the present cases in the same category with Social Circle, namely, that the rates to Social Circle in case 68 and to such other localities in the same category embrace a charge for the haul through them on to the basing point and a charge for a local haul back, *when those hauls are not in fact made.*

In the Social Circle Case (162 U. S., 184), the basing point, Atlanta, was the shorter distance point, and Social Circle the longer distance point, and the haul was through the basing point to Social Circle. *The haul was in fact made* for which the two rates were charged (the through rate to Atlanta and the local from Atlanta *on to* Social Circle), *with the exception that no part of the haul was a local haul.*

2.

The shorter distance points in the present cases, the rates to which embrace charges for a haul on to the

basing point and a local haul back, when no such hauls have been made, are the following:

IN CASE NO. 68.
Social Circle.
Covington.
Conyers.
Stone Mountain.

IN CASE NO. 70.
West Point.

3.

AS TO THE OTHER SHORTER DISTANCE POINTS.

In case No. 69, the rates from Cincinnati to the shorter distance points, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, are the through rates to Chattanooga plus the local rates *on to those points*—in other words, the rates to these shorter distance points are based on the Chattanooga rates, and this in every instance results in higher rates than the rates for the haul through those points to Atlanta.

In case No. 68 the rates to the shorter distance points, Greensboro and Madison, are based on the Augusta rate and are the through rates from New York to Augusta plus the *locals on*, and this results in both instances in higher rates than the rates charged for the haul through Greensboro and Madison on to Atlanta.

In case No. 70 the rates to the shorter distance points, Newnan, Grantville, Hogansville, and Lagrange, are based on the Atlanta rates—that is, they are the through rates from New York to Atlanta plus the *locals on*, and this results in each instance in higher rates to those localities than are charged for the haul through them on to Opelika.

V.

RATES TO LA GRANGE, ACWORTH, AND MARIETTA ARE NOT THE LOWEST COMBINATION OF THROUGH AND LOCAL RATES.

1.

The circuit court of appeals in its decision in these cases, sustaining the combination of through and local rates as the rates to the shorter-distance points, did so on the express ground that they were *the lowest combination of through and local rates available*. In other words, that the combination was made up, in the language of the court, of "the through rate *to that competitive point* which, combined with the local rate from the competitive point to the point of destination, would give the lowest through rate."

(Record, case No. 69, bot. p. 276.)

2.

The rates from New York to La Grange (case No. 70) are *not the lowest combinations*. They are based on the Atlanta rates, and the lowest combinations would be rates based on the Opelika rates. This results from the facts that Opelika has the same rates from New York as Atlanta, and the distance from Opelika to Lagrange is only 38 miles, while from Atlanta to Lagrange it is 71 miles, and, therefore, the local rate from Opelika to Lagrange is lower than the local rate from Atlanta to Lagrange. Hence, as testified by the Lagrange merchants, Opelika merchants can reship goods received from New York back to Lagrange and *undersell* the Lagrange merchants.

(Original printed argument for Commission, p. 162.)

3.

The rates from Cincinnati to Acworth and Marietta (case No. 69) *are not the lowest combinations.* They are based on Chattanooga, and the lowest combinations would be on Atlanta. Hence, as testified by merchants at those localities, goods can be shipped through Acworth and Marietta to Atlanta and back to Acworth and Marietta at *lower rates* than they can be shipped to Acworth and Marietta direct.

(Original printed argument for Commission, p. 166.)

VI.

COURT MAY MODIFY ORDER OF THE COMMISSION, AT LEAST TO THE EXTENT OF SUSTAINING IT ONLY AS TO SOME OF THE SHORTER DISTANCE POINTS, IF IT SHOULD BE OF OPINION THE ORDER OUGHT NOT TO BE ENFORCED AS TO ALL.

1.

This court and the circuit court of appeals modified the order of the Commission in the Social Circle case (162 U. S., 184) by sustaining it in part and overruling it in part.

The order of the Commission in that case had two subdivisions. In one it forbade the charging of higher rates from Cincinnati to Social Circle than were charged for the longer haul through Social Circle to Augusta, and in the other it directed that the rate from Cincinnati to Atlanta should be reduced from $1.07 to $1. The circuit court of appeals for the fifth circuit rendered a decree *enforcing the first subdivision of the order only* and denying the prayer of the Commission for the enforcement of the second subdivision reducing the rate to Atlanta.

This court sustained the decree of the circuit court of appeals.

2.

In the "Alabama Midland case" (168 U. S., 175) this court says:

The courts are not restricted "to a consideration merely of the power of the Commission *to make a par-*

ticular order in question, but additional evidence may be put in by either party and the duty of the court is to decide as a court of equity upon the entire body of the evidence."

The court may modify an order made by the Commission, so as to adapt it to the ends of justice under the entire body of the evidence before the court, and may, therefore, affirm the orders of the Commission in these cases *as to some of the shorter distance points*, although it might be of opinion that the ends of justice do not require its affirmance as to all such points.

We claim the orders should be affirmed as to all the shorter distance points.

VII.

MAJORITY OF PUBLIC INTERESTS WILL BE PROMOTED BY ENFORCING ORDERS OF COMMISSION.

1.

Counsel for the carriers says, in his printed argument filed in this court (p. 83):

"The court must look to the interests *of the great majority of the public;* and if it conflicts with the interests of a small minority the loss to the latter is, in contemplation of law, *damnum absque injuria.*"

If this be a correct proposition, still we contend that the interests "of the great majority of the public" will be promoted by enforcing the orders of the Commission.

2.

Counsel for the carriers states that "the public interest consists of three classes," as follows:

"*First*, the public at Cincinnati, Boston, New York, Philadelphia, and Baltimore.
"*Second*, the public at Atlanta and Opelika.
"*Third*, the public at the shorter-distance points."
(Printed argument for carriers, p. 83.)

We claim that the LAWFUL *interests of all these classes, as well as of the carriers, will be advanced by enforcing the orders of the Commission.*

3.

PUBLIC INTEREST AT SHORTER-DISTANCE POINTS.

Counsel for the carriers says, "*It is admitted that the public interest at the shorter-distance points is discriminated against.*"

(Printed argument for carriers, p. 83.)

It is thus conceded that the interest of one class of the public, the shorter-distance points, is not subserved but is prejudiced by the discrimination.

We have shown, in both our oral and original printed arguments, that the public interests *of all the shorter-distance points discriminated against for the 138 miles* between Atlanta and Chattanooga, for the *171 miles* between Atlanta and Augusta, and for the *109 miles* between Atlanta and Opelika, are of far greater magnitude than the public interest centered at Atlanta or Opelika, or both taken together.

(See original printed argument for Commission, pp. 185, 186.)

4.

PUBLIC INTERESTS AT SHIPPING POINTS, CINCINNATI, NEW YORK, ETC.

The public interests at the shipping points, Cincinnati, New York, etc., can not be prejudiced, but, on the contrary, will be promoted by establishing a just relation between the rates to the shorter and longer distance points, thus enabling the former to sell goods in competition with the latter.

Whatever loss to the shipping points, New York, Cincinnati, etc., in trade with Atlanta and Opelika, may result, will be compensated or more than compensated by the increase in their business with the shorter distance points.

That the business at shorter distance points will be enlarged and their demand for goods *from the shipping points* be increased, appears from the following considerations:

First. "The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by a *larger supply.*" (Joint Traffic Association case, 171 U. S., 505).

This "larger supply" called for at the shorter distance points will be furnished by the shipping points, New York, Cincinnati, etc.

Second. Lower rates result in cheaper goods, and this will increase the *actual consumption* at the shorter distance points.

Third. Lower rates will also stimulate the business at shorter distance points, particularly where such lower rates enable merchants at those points to compete on terms of equality with other localities in the same territory.

"The stimulus given business at intermediate points" (by reduction of rates) "will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it."
(Opinion of Mr. Aldace F. Walker; see original printed argument for the Commission, p. 215).

"At present the amount shipped to intermediate points is relatively very small. Giving such points the rates charged at more distant points, if adopted and maintained as a general principle, would necessarily encourage local industry and enterprise."
(Opinion of Mr. Aldace F. Walker; see original printed argument for the Commission, p. 216).

Fourth. Lower and nondiscriminatory rates will not only increase the business of *merchants already at the shorter distance points, but will induce population and other merchants to come to those points and engage in business and invest their capital there.*

For the foregoing reasons, whatever loss to the shipping points, New York, Cincinnati, etc., in business with Atlanta and Opelika may result from reducing the rates to the shorter distance points, will be more than compensated by the increase in trade of those shipping points with the shorter distance points.

5.

THE PUBLIC INTEREST AT ATLANTA AND OPELIKA.

Counsel for the carriers has not pointed out any way in which any *legitimate* interest of the public at Atlanta or Opelika will be injuriously affected by establishing a just relation between the rates to those points and to the shorter distance points. On top of page 111 of his printed argument filed in this court he says:

"If the rates to the shorter distance points involved in these cases should be reduced, so as to be not higher than the rates to Atlanta and Opelika, it would doubtless in some instances induce merchants at the shorter distance points to purchase their goods in Cincinnati, New York, etc., *instead of purchasing them in Atlanta or Opelika, as they have heretofore done.*"

The testimony of the merchants at the shorter distance points (the only testimony on the subject) is that *they now purchase their supplies of goods from Cincinnati, New York, etc., and not from Atlanta or Opelika.*

Answer of S. T. Whittaker to Q. 10, Record, case 70, p. 49.

Answer of Luther S. Turner to Q. 10, Record, case 70, p. 51.

Answer of C. V. Truit to Q. 10, Record, case 70, p. 40.

Answer of L. Trammell to Q. 10, Record, case 68, p. 32.

Answer of W. L. Sessions to Q. 10, Record, case 69, p. 90.

Answer of D. N. Anderson to Q. 10, Record, case 69, p. 92.

Answer of J. W. Knight to Q. 10, Record, case 69, p. 91.

Answer of Thomas Lumpkin to Q. 10, Record, case 69, p. 80.

(See original printed argument for Commission, pp. 115–117.)

But conceding that making the shorter distance rates not higher than the longer distance rates would result in causing merchants at shorter distance points to procure supplies from New York, Cincinnati, etc., which they had theretofore gotten from Atlanta or Opelika, *is injury thus done to any lawful or legitimate interest of Atlanta or Opelika?* Have Atlanta or Opelika any natural inalienable right or prerogative to supply surrounding localities with their goods and *to have them debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati?*

6.

To sum the matter up, we contend and think we have demonstrated that the public interest both at the shorter distance points and at the shipping points will be promoted by enforcing the orders of the Commission, and that no lawful interests of the basing points or trade centers, Atlanta and Opelika, can be injuriously affected.

INTEREST OF CARRIERS.

We further contend that any reduction in the tonnage of traffic hauled by the carriers to Atlanta and Opelika will be compensated or more than compensated by an increase in the tonnage of traffic hauled by them to the shorter distance points, and that *the interests of the carriers will thus be protected if not advanced.*

VIII.

1.

See discussion of orders of Commission in our *original printed argument*, Chapters XXVIII, XXIX, XXX, XXXI, XXXII, and XXXIII, pp. 193–222.

2.

See discussion of "BURDEN OF PROOF" as to excessiveness of rates and as to how that burden *has been shifted*, in our *original* printed argument, Chapter XXXV, and *particularly pages 229–234*.

3.

ACTION OF COMMISSION IN REFUSING TO CONSIDER COMPETITION BY CARRIERS SUBJECT TO THE LAW.

As applicable for the most part to the present cases, attention is respectfully asked to *Chapter XXII, pp. 151–155, of our original printed argument in the* "CHATTANOOGA CASE," in which are pointed out the distinctions between that case and the "Behlmer Case" in respect to the action of the Commission in refusing to consider competition by carriers subject to the act.

This court in the "Import Case" (162 U. S., p. 239) held that where the Commission has "*unduly restricted its inquiries upon a* mistaken view of the law" the court "*should either inquire into the facts on its own account* or send the case back to the Commission to be lawfully proceeded in."

It is thus held that it is *left to the discretion* of the court in such cases "either *to inquire into the facts on its own account* or to send the case back to the Commission." The statute, section 16 of the act to regulate commerce also provides that the courts may inquire into these cases on their own account, and to that end *may take additional testimony*. Both the courts below in these cases, as in the "Chattanooga Case," *elected* to inquire into the matters in controversy on their own account, and *with that view the trial court* (*circuit court*) *allowed new testimony to be introduced before it* larger in amount than that before the Commission.

The courts below having thus exercised their discretion by "*inquiring into the facts on their own account*," it is not incumbent upon this court to have the cases remanded to the Commission, particularly as the Commission found the facts fully *on the testimony before it*, and its error was an *error of law*, which it is peculiarly the function of the courts to correct. The conclusions of the Commission on a *part only* of the evidence (that before it) can not be of much value after the case has been reopened by the court and new testimony has been taken.

L. A. SHAVER,
Solicitor for Complainant.

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Reply Br. of Mayes for Appts.

In the Supreme Court of the United States Court

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JAMES H. McKENNEY, Clerk

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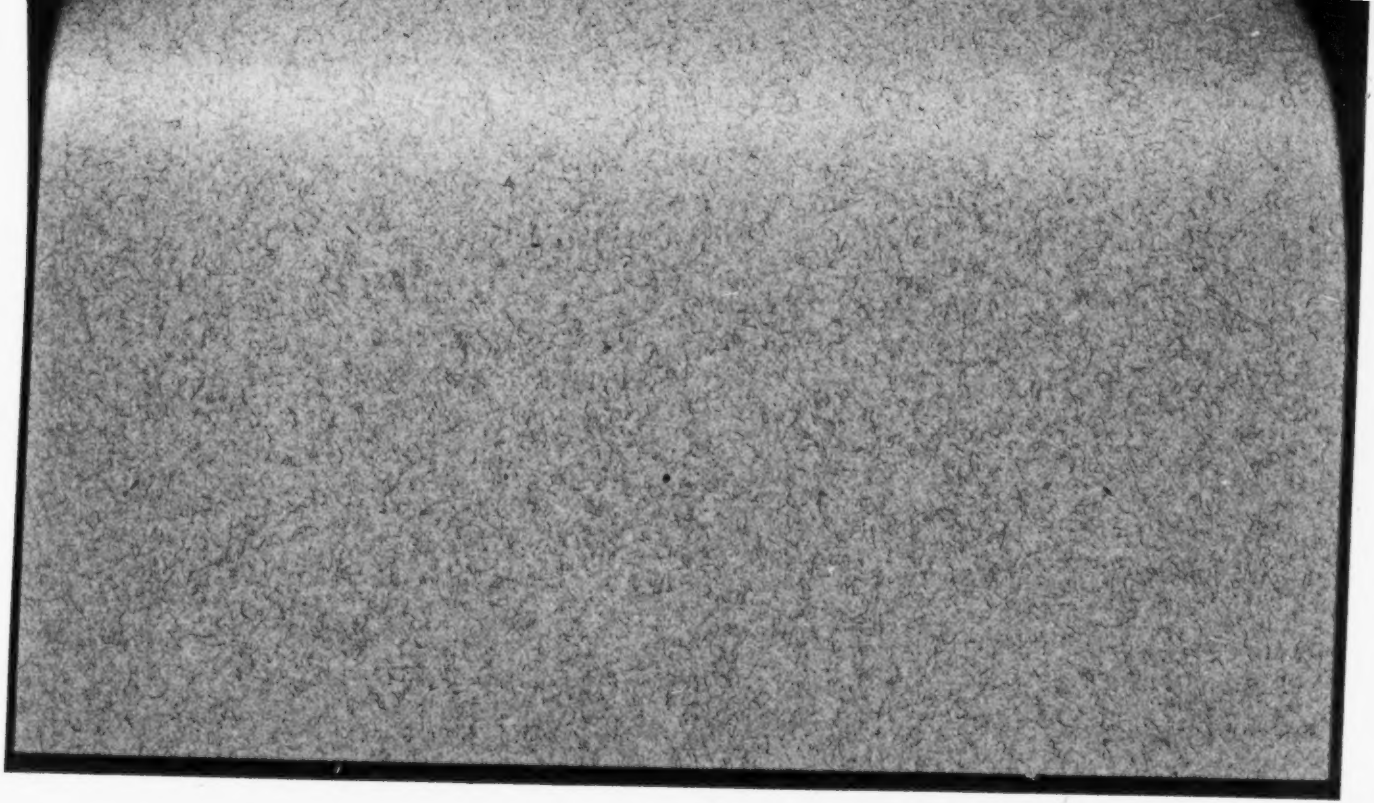
SURREJOINDER ARGUMENT FOR THE APPELLANT.

L. A. Shaver,
Solicitor.



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SUR-REJOINDER ARGUMENT FOR APPELLANT.

I.

On page 24 of his rejoinder argument recently filed, counsel for the carriers cites the testimony of witness Brown IN CASE 69, that freight FROM CINCINNATI to local stations between Chattanooga and Atlanta is delivered at such stations by local freight trains.

1.

NO TESTIMONY OF THIS KIND IN CASES 68 AND 70.

It is significant that there is no such testimony in cases 68 and 70, the one involving rates *from New York* to Atlanta and to local stations between Augusta and Atlanta, and the other involving rates *from New York* to Opelika and local stations between Opelika and Atlanta.

As counsel evidently recognizes the importance of such proof and made it in case 69 as to *freight from Cincinnati*, the presumption is that he would have made it in cases *68 and 70* as to *freight from New York*, if there existed any basis for such proof in those cases.

It is clear that the testimony of the witness Brown as to the practice in reference to *freight from Cincinnati* does not warrant counsel's statement that the evidence shows the existence of the same practice as to freight from New York.

2.

WITNESS BROWN DOES NOT DISTINGUISH CARLOAD AND LESS THAN CARLOAD SHIPMENTS.

Moreover, the testimony of the witness Brown is defective, if not worthless, in that it fails to distinguish between "*Carload*" and "*less than carload*" freight.

Less than carload freight from Cincinnati may be transferred at Chattanooga from a car in a through train to a car in a local train, but such is not the case as to *carloads*. They naturally go through in the cars in which they are originally loaded, and such is the undisputed testimony.

(*See testimony of merchants at Marietta and Cartersville, in Original Printed Argument for Commission*, pp. 116, 117).

3.

MARSHALING OF CARS IN THROUGH TRAINS.

If I may be permitted to follow the example of counsel for the carriers and go outside the record in these cases, I will state that the proof in other cases before the Commission has shown that the cars on through trains are, in railway parlance, "MARSHALED"—that is, they are arranged in such order that cars containing carloads can be detached from the *end of the train* and left at their respective destinations, while the balance of the through train moves on. (5 I. C. C., p. 34.)

For example, if on a haul through A, B, and C, to D, a through train be composed of a number of cars, some destined to A, some to B, some to C, and some to D, the cars destined for A, the first station, are placed at the rear end of the train, those for B next, those for C next, and those for D, the terminus of the through haul, next.

4.

NO GREATER EXPENSE ON CARLOAD SHIPMENTS TO LOCAL STATIONS THAN TO TERMINAL COMPETITIVE POINTS.

Under this system of "*marshaling*" cars in a through train, there is no greater expense on the hauls to intermediate local stations than to the terminal station. This is doubtless the practice as to *carload* shipments to the shorter-distance points in these cases, and the evidence that the goods are hauled

through in the cars in which they are originally loaded tends to prove it, and *shows conclusively that there is no transfer en route from one car to another, but at most merely a switching service.*

The local rates, charged as a part of the through rates to the shorter-distance points in these cases, were fixed by the Georgia Railroad Commission to cover the expense of *original strictly local* shipments—that is, shipments *originating* at, for example, Atlanta and ending at Social Circle or *vice versa*—and were not intended to apply to a mere transfer of cars or freight *en route* on a through haul. The expense in the former case is greater than in the latter.

In the case against the *Louisville and Nashville Railroad Company, the Western Railway of Alabama*, and *the Atlanta and West Point Railway*, now pending in the circuit court of appeals for the fifth circuit, it was proven that carload shipments from New Orleans to La Grange (a local station) were not more expensive to the carrier than such shipments through La Grange to Atlanta. *The same proof was made as to less than carload shipments.* This testimony was brought out on cross-examination of the witness Lutz, traffic manager of the Atlanta and West Point Railroad and the Western Railway of Alabama, *two of the defendants in the present case, No. 70.*

5.

THE SHIPMENTS TO SHORTER-DISTANCE POINTS CONSIST, FOR THE MOST PART, OF GROCERIES, DRY GOODS, CLOTHING, BOOTS AND SHOES, AND ARE SHIPPED TO MERCHANTS IN CARLOADS.

It is to be noted that *consumers* at the shorter-distance points do not buy their personal or household supplies from distant supply markets like New York or Cincinnati, but from

their local or home merchants. These merchants naturally purchase goods in large quantities, or carload lots.

The witness Brown testifies that the traffic from "Ohio River crossings" (Cincinnati, Evansville, etc.) "consists largely of *groceries, clothing, boots, and shoes.*"
(Record in case 69, bot. p. 139.)

Dry goods, clothing, boots, shoes, etc., also constitute a large part of the traffic from New York. All these articles are generally purchased by merchants in large quantities and are consequently shipped in carloads.

6.

THE KNOWLEDGE OF THEIR OWN PRACTICE AS TO SHIPMENTS TO LOCAL STATIONS LIES PECULIARLY IN THE POSSESSION OF THE CARRIERS, AND THE BURDEN WAS UPON THEM TO MAKE PROOF OF IT AND NOT LEAVE IT TO CONJECTURE.

It is further to be borne in mind that the practice of the carriers in respect to the transportation of freight to local stations is a matter the knowledge of which lies peculiarly in their possession, and, under the familiar rule, the burden was upon them to prove that practice. *Moreover, it is matter of defense.*

Instead of proving that practice as to carloads and less than carloads on the roads of the defendants in these cases, counsel goes outside the records and cites what he claims the Commission in another case found to be the practice on the New York, New Haven and Hartford Railroad, not a party to this proceeding and located a thousand miles away in a totally different territory.' (Bot. p. 24, rejoinder argument for carriers.)

7.

INCONSISTENT WITH PLEA OF COMPETITION.

The claim now insisted upon *at the "eleventh hour,"* that the higher rates to the shorter distance points are due to extra expense on shipments to those points, is inconsistent with the plea of competition heretofore solely relied upon.

If the difference between the rates to the shorter and longer distance points is the result of competition, then it is not attributable to extra expense on hauls to shorter distance points. If it is the result of such extra expense, then it is not attributable to competition.

If the higher rates to the shorter distance points are due to extra expense on hauls to those points, the burden was upon the carriers, not only to prove that fact but also to show the amount of that expense or to give the court some idea of that amount, so that the court might determine whether the difference between the two sets of rates was warranted by such extra expense. As before stated, *it is strictly matter of defense.*

8.

EXTRA EXPENSE NOT ALLEGED IN ANSWERS OF DEFENDANTS.

The answers of the defendant carriers do not allege that the higher rates to the shorter than to the longer distance points are the result of extra expense on hauls to the former. The only justification averred in the answers, both before the Commission and the court, is competition. (Record in Case 69, pp. 9, 65, 71.)

II.

OUR EXCRESCENT DIAGRAM. LOCAL RATES OF GEORGIA RAILROAD COMMISSION OVER FOUR TIMES AS HIGH PER MILE AS THROUGH RATES.

Counsel for the carriers is evidently much disquieted or "exercised" by what he calls the "excrescence" on our diagram. He reproduces the diagram on page 9 of his rejoinder argument, and devotes several pages to showing that the local rate between Atlanta and Social Circle is not as many times higher per mile than the through rate as would be indicated by the lines in the diagram representing the two rates.

Our diagram did not purport to be absolutely accurate in this respect. It was only intended to illustrate the fact that rates to shorter distance points embraced a charge for a haul on to the basing point plus a *relatively high local rate* for a haul back when the freight was delivered at the shorter distance point, and these two hauls were not in fact made. If we had drawn the diagram ourselves and it had occurred to us, we would have made the line representing the local rate only *four or five times* as large as the line representing the through rate.

In our oral argument we showed that the local rail rate was *over four times* as high per mile as the through rail rate, comparing for illustration the local rate for the 71 miles between Atlanta and La Grange with the through rate for the 875 miles by the short *all-rail* line from New York to Atlanta, as follows:

	Rate per ton per mile.
Atlanta to Lagrange, 71 miles, local rate, 40 cents	11.4 cents
New York to Atlanta, 875 miles by rail, through rate, $1.14	2.6 cents

Below is shown the rate per ton per mile under the *rail and water through* rate for a *constructive* mileage of 558 miles from

New York to Atlanta and under the local rate for 71 miles between Atlanta and Lagrange:

	Rate per ton per mile.
Atlanta to Lagrange, 71 miles, local rate, 40 cents.....	11.4 cents
New York to Atlanta, 558 miles, through rate, 81.14.....	4.09 cents

In discussing our "excrescent" diagram, counsel for the carriers makes the following admission:

"It is conceded that the rates charged by the defendants from New York to Social Circle *are as much through rates as those charged from New York to Atlanta.* Through bills of lading are issued from New York to Social Circle, just as from New York to Atlanta. Freight from New York to Social Circle *is delivered at Social Circle without being carried through Social Circle to Atlanta and then back to Social Circle.* (Italics mine.) (Bot. p. 9, rejoinder argument for carriers.)

This being so, what excuse is there for charging the proportion of the Atlanta through rate from Social Circle to Atlanta and the relatively high local rate back as parts of the through rate to Social Circle?

To say that this is not charging *for two hauls not performed* because the local rate between Atlanta and Social is *merged*, so to speak, in the through rate to Social Circle, and when distributed along the entire line from New York to Social Circle does not result in an "excrescence" on a diagram—*in other words, does not present itself to the eye in all its naked deformity*—is simply to raise a "distinction without" as much "difference" as that between "tweedledum and tweedledee."

III.

OUR ALLEGED INCONSISTENCY.

Counsel for carriers, as showing that injury would result to Atlanta and Opelika from the enforcement of the orders of the Commission, stated (*top p. 111, original printed argument for carriers*) that the merchants at shorter distance

points might be induced "to purchase their goods in Cincinnati, New York, etc., *instead of purchasing them in Atlanta and Opelika, as they have heretofore done.*" [Italics mine.]

In reply to this we, in our printed reply argument (p. 21), called attention to the testimony, showing that the merchants at the shorter distance points *now purchase their supplies of goods from Cincinnati, New York, etc.*

We then further said:

"But conceding that making the shorter distance rates not higher than the longer distance rates would result in causing merchants at shorter distance points to procure supplies from New York, Cincinnati, etc., which they had theretofore gotten from Atlanta or Opelika, *is injury thus done to any lawful or legitimate interest of Atlanta or Opelika?* Have Atlanta or Opelika any natural inalienable right or prerogative to supply surrounding localities with their goods and *to have them debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati?*"

Counsel for the carriers sees in this last statement or query an inconsistency with our statement that the merchants at the shorter distance points now buy their goods from New York, etc. (See rejoinder argument for carriers, bottom p. 22.) *We can not see it, and reaffirm all we have had said in this connection.*

Counsel further contends that the fact that merchants at shorter distance points now buy their goods for the most part from New York, Cincinnati, etc., instead of procuring them from Atlanta and Opelika, shows there is no discrimination against the shorter distance points. He says:

"The statement" (that they now buy their goods at New York, Cincinnati, etc.), "shows that the *present relation of rates*, so far from unjustly discriminating in favor of Atlanta and Opelika, is such that the merchants at the shorter distance points, instead of purchasing their goods at Atlanta and Opelika, find it to their interest to purchase at New York or Cincinnati." (Italics mine.)

"*The present relation of rates*" complained of is such as to debar shorter distance merchants from competition with merchants at Atlanta and Opelika in common territory and to build up the latter at the expense of the former. *This is the discrimination in question.*

The *rates complained of* are rates from New York and Cincinnati to the shorter distance points, and *this implies purchase from the former* and shipment to the latter. *Such purchase is the very basis of these proceedings*, and the fact of such purchase has no possible bearing on *the discrimination in question.*

IV.

THIS COURT SHOULD INQUIRE INTO THE FACTS ON ITS OWN ACCOUNT, AND IN VIEW OF THE ENORMITY OF THE WRONGS INCIDENT TO THE SYSTEM OF RATES COMPLAINED OF, SHOULD NOT DIRECTLY OR INDIRECTLY SANCTION THAT SYSTEM IF IT CAN POSSIBLY BE AVOIDED.

On page 23 of the rejoinder argument for the carriers, it is practically admitted that the lower courts, in the exercise of their discretion, have inquired into the facts in these cases on their own account, and that this court may do likewise.

The injury or prejudice to the shorter distance points resulting from the discriminations complained of is *not denied*, and it is clear that these cases fall within the evil the law was designed to remedy. In view of this and the further fact that the courts below *ignored the evidence as to the excessiveness of the shorter distance rates* (original argument for Commission, pp. 60–62), *and refused to consider other material matters* (assignment of error, 6, 7, 11, 13, 19, 20, 21, original argument for Commission, pp. 18–21), this court is earnestly solicited to inquire fully into the facts on its own account.

The Southern Trade Center, or Basing Point System, the gross injustice of which is illustrated in these cases, should not, if it can possibly be avoided, receive the sanction of this great tribunal, directly or indirectly. Such sanction would tend to fasten it upon the country indefinitely, if not for all time; it would be a great public calamity, and would defeat one of the principal objects which the commerce law was intended to accomplish. (Original Printed Argument for Commission, p. 135.)

As showing that the greater charge for the shorter than the longer haul prevails *as a rule* only in Southern territory (see *testimony of Jessie M. Smith* (the only testimony on this point) *in answer to interrogatories 4, 5, 6, 7, and 8, Record in Case 69, pp. 98, 99*).

V.

OUR ALLEGED ADMISSION.

Counsel for carriers, on page 3 of his rejoinder argument, claims that we "virtually concede that the force of competition at Atlanta and Opelika is at least somewhat greater than at the shorter distance points," by our statement on page 6 of our reply argument, "that the Commission's orders are consistent with the view that the force of competition is somewhat greater at Atlanta and Opelika than at the shorter distance points."

This quotation from our reply argument is the heading of a subdivision of that argument. In the body of the subdivision we state the matter *hypothetically*—that is, that "CONCEDING FOR ARGUMENT'S SAKE the force of competition at Atlanta and Opelika is greater than at the shorter distance points," the orders are consistent with that view. (Reply argument for Commission, p. 6.)

Counsel further contends that this statement in our reply argument is "inconsistent with our argument that the rates at Atlanta and Opelika are made by agreement between the

carriers." *It is one of the undisputed, conceded facts in these cases that those rates are made by agreement between the carriers.* (See testimony cited in our original printed argument, p. 82.)

Moreover, a statement *hypothetically* of one proposition does not preclude the maintenance of an alternative or different proposition. There is no inconsistency in such a case and no absolute admission of the hypothesis.

VI.

CRITICISM OF ORDERS OF COMMISSION ON THE GROUND THAT UNDER THEM RATES TO SHORTER DISTANCE POINTS MAY BE LEFT AS HIGH AS RATES TO LONGER DISTANCE POINTS.

In addition to what is said in our reply argument (pp. 5–9), in answer to the above criticism or hypercriticism, the attention of the court is asked to the discussion of this matter in *our original printed argument, pp. 199–202.*

VII.

DISTANCE—MILEAGE RATES.

The Commission has not held in these cases, as contended by counsel for carriers (rejoinder argument for carriers, p. 2), that distance is the only or controlling factor in establishing rate adjustments as between different localities. (Original printed argument for Commission, pp. 220, 221.)

Section 4 of the law, in forbidding the greater charge for the shorter haul, makes distance a controlling factor in the absence of substantially dissimilar circumstances and conditions. The Commission has gone no further than this.

As to the position of the Commission in reference to *mileage rates*, see original printed argument for Commission, pp. 220, 221.

Respectfully submitted.

L. A. SHAVER,
For Appellant.

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TABLE OF AUTHORITIES.

	Cited in Brief.
1 Ann. Rep., I. C. C. (1887)	125, 171, 172, 178, 209, 215, 223
2 Ann. Rep., I. C. C. (1888)	133
11 Ann. Rep., I. C. C. (1897)	42, 43, 48, 143, 161, 186, 204, 220
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Brewer & Hanleiter vs. Central of Georgia Ry., 84 Fed. Rep., 261, 268	46, 95, 113
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Chicago etc. Railway Co. vs. Minnesota, 134 U. S., 460	143
Chicago & N. W. Ry. Co. vs. Dey, 35 Fed. Rep., 881	106, 107, 142
C. & N. W. Ry. Co. vs. Osborne, 52 Fed. Rep., 915	182
C. M. & St. P. Ry. Co. vs. Tompkins, 176 U. S., 172-180.	138, 140, 141
C. N. O. & T. P. Ry. vs. I. C. C., 162 U. S., 184, 191, 192	194
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	Cited in Brief
Eau Claire Board of Trade vs. C. M. & St. P. Ry. Co. et al., 4 I. C. Rep., 65	64
Edison's Encyclopedia, 201	160
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Hozier vs. Caledonian Ry. Co., 1 Nev. & Mac., 32.	86
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I. C. C. vs. D. L. & W. Ry. Co. et al., 64 Fed. Rep., 723	229

Cited in Brief.

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I. C. C. vs. L. & N. R. R. Co., 73 Fed. Rep., 421. 173

I. C. C. vs. W. & A. R. R. Co., 88 Fed Rep., 194. 181

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L. R. & M. R. Co. vs. St. L. & S. W. Ry. Co., 63 Fed. Rep., 778, 779 182

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Ransome vs. E. C. Ry. Co., 1 Nev. & Mac., 71, 120	86, 91
Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 402–413	140, 141
Ricketts, Smith & Co. vs. Midland Ry. Co., Law Rep. (1896), 1 Q. B., 266	110
Savannah Bureau of Frt. etc. vs. C. & S. Ry. Co., 7 I. C. Rep., 474, 479, 480	44, 49, 71-73, 93
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Travelers' Official Guide (June, 1899), 788	81
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

NO. 69,

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE WESTERN & ATLANTIC RAILROAD CO., ET. AL., Appellees.

NO. 68,

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD COMPANY, ET. AL., Appellees.

NO. 70,

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, ET. AL., Appellees.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

Argument of ED. BAXTER,

Solicitor for Appellees, as of Record.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

The Interstate Commerce Commission, Appellant,

vs.

The Western & Atlantic Railroad Company;
The Louisville & Nashville Railroad Company;
The Nashville, Chattanooga & St. Louis Railway Company;
The Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway;
The Cincinnati Southern Railway Company, and S. M. Felton, Receiver, Appellees.

No. 69.

The Interstate Commerce Commission, Appellant,

vs.

The Clyde Steamship Company;
The South Carolina Railway Company;
The Georgia Railroad & Banking Company;
The Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad;
The Richmond & Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia;
D. H. Chamberlain, Receiver; H. M. Comer, Receiver; and Reuben Foster and F. W. Huidekoper, Receivers, Appellees.

No. 68.

The Interstate Commerce Commission, Appellant,

vs.

The Clyde Steamship Company;
The South Carolina Railway Company;
The Georgia Railroad & Banking Company;
The Louisville & Nashville Railroad Company, and the Central Railroad & Banking Company of Georgia, lessees of the Georgia Railroad;
The Richmond & Danville Railroad Company, and the Georgia Pacific Railway Company, lessees of the Central Railroad of Georgia;
The Atlanta & West Point Railroad Company, and the Western Railway Company of Alabama;
D. H. Chamberlain, Receiver; H. M. Comer, Receiver; and Reuben Foster and F. W. Huidekoper, Receivers, Appellees.

No. 70.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ARGUMENT OF ED. BAXTER,

SOLICITOR FOR APPELLEES, AS OF RECORD.

STATEMENT OF CASES.

I.

The above entitled cases were severally originated by petitions filed before the Interstate Commerce Commission against the respective appellees, by the Railroad Commission of Georgia.

The Interstate Commerce Commission sustained said petitions; and made certain orders against the respective defendants therein.

Said defendants, conceiving said orders to be illegal, declined to obey them; and the Interstate Commerce Commission filed separate petitions in the Circuit Court of the United States for the Northern District of Georgia to enforce said orders against the respective appellees.

Said Circuit Court declined to enforce said orders; and dismissed the petitions filed in that Court. The Interstate Commerce Commission appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which Court affirmed the decrees of the Circuit Court; and the Interstate Commerce Commission appealed to this Court.

II.

The Petition Filed Before the Interstate Commerce Commission in Case No. 69.

The petition filed before said Commission in case No. 69 averred in substance:

That the rates of freight charged and collected by the appellees in that case from the city of Cincinnati and other Ohio River points to Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun, Georgia, are more on each class than the amount charged and collected for freight to the city of Atlanta, which is a greater distance from the city of Cincinnati and other Ohio River points.

Trans. No. 69, pp. 6, 7.

That the transportation is of a like kind of through freight; that the transportation to Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun is under substantially similar circumstances and conditions as the transportation to Atlanta; and that said appellees had not been authorized by said Commission to charge less for longer than for shorter distances for the transportation of said through freight.

Trans. No. 69, p. 6.

That the through rate charged and collected to Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun "is unreasonable and discriminating in its nature" and in "violation of Section 4 of the Act of Congress, entitled 'An Act to Regulate Commerce.'"

Trans. No. 69, p. 7.

III.

The Answers Filed Before the Interstate Commerce Commission in Case No. 69.

Among the answers filed before said Commission in case No. 69 was that of the Louisville & Nashville Railroad Co., which denied in substance, that the transportation of like kind of freight is done under substantially similar circumstances and conditions, when done between points on the Ohio River and Atlanta, as when done between said Ohio River points and Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun. On the contrary, it averred that the transportation to Atlanta is done under entirely different circumstances and conditions from those affecting transportation to Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun.

Trans. No. 69, pp. 8, 9.

Said answer denied that the rates charged to Marietta, Acworth, Cartersville, Kingston, Adairsville and Calhoun are unreasonable or discriminating in their nature. On the contrary, it averred that they are fair and reasonable; and that they do not discriminate against any person or place.

Trans. No. 69, p. 9.

IV.

The Order Made by the Interstate Commerce Commission in Case No. 69.

The order made by said Commission in case No. 69 orders the appellees, the Louisville & Nashville Railroad Co., the Nashville, Chattanooga & St. Louis Railway Co., individually, and as lessee of and operating the Western & Atlantic Railroad, and the Cincinnati, New Orleans & Texas Pacific Railway Co., individually, or as lessee of and operating the Cincinnati Southern Railway, to cease and desist "from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance over the same line in the same direction, to Atlanta, in the State of Georgia, the shorter being included within the longer distance;" etc.

Trans. No. 69, p. 57.

V.

The Petition Filed Before the Interstate Commerce Commission in Case No. 68.

The petition filed before said Commission in case No. 68 averred in substance:

That the rates of freight charged and collected by the appellees in that case from the city of New York and other eastern points to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, Georgia, are more on each class than the amount charged and collected to the city of Atlanta, which is a greater distance from the city of New York and other eastern points.

Trans. No. 68, pp. 6, 7.

That the transportation is of a like kind of freight; that the transportation to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain is under substantially similar circumstances and conditions as the transportation to Atlanta; and that said appellees had not been authorized by said Commission to charge less for longer than for shorter distances for the transportation of said through freight.

Trans. No. 68, p. 7.

That the through rate charged and collected to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain "is unreasonable and discriminating in its nature," and in "violation of Section 4 of the Act of Congress, entitled, 'An Act to Regulate Commerce.'"

Trans. No. 68, pp. 7, 8.

VI.

The Answers Filed Before the Interstate Commerce Commission in Case No. 68.

Among the answers filed before said Commission in case No. 68, was that of the Georgia Railroad & Banking Co., the Louisville & Nashville Railroad Co., and the Central Railroad and Banking Co. of Georgia, which denied in substance that the transportation of like kind of freight is done under substantially similar circumstances and conditions when done between New York, Philadelphia, etc., and Atlanta, as when done between New York, Philadelphia, etc., and Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain.

Trans. No. 68, p. 9.

Said answer denied that the rates charged to Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain are unreasonable or discriminating in their nature. On the

contrary, it averred that they are fair; and that they do not discriminate against any person or place.

Trans. No. 68, p. 10.

VII.

The Order Made by the Interstate Commerce Commission in Case No. 68.

The order made by said Commission in case No. 68 orders the appellees, the Clyde Steamship Co., the South Carolina Railway Co., and D. H. Chamberlain, the Receiver thereof; the Georgia Railroad & Banking Co., the Louisville & Nashville Railroad Co., and the Central Railroad & Banking Company of Georgia, as lessees of the Georgia Railroad; H. M. Comer, Receiver of the Central Railroad & Banking Company of Georgia; the Richmond and Danville Railroad Company, and the Georgia Pacific Railway Co., as lessees of the Central Railroad of Georgia; and F. W. Huidekoper and Reuben Foster, Receivers of said Richmond & Danville Railroad Co.; that is to say such of them as are operating, as common carriers, the Clyde Steamship Line, the South Carolina Railway, and the Georgia Railroad, respectively, to cease and desist, "from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from New York and other North Atlantic ports for the shorter distance to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, in the State of Georgia, than for the longer distance over the same line in the same direction to Atlanta, in the State of Georgia, the shorter being included within the longer distance;" etc.

Trans. No. 68, pp. 17, 18.

VIII.

The Petition Filed Before the Interstate Commerce Commission in Case No. 70.

The petition filed before said Commission in Case No. 70 averred in substance:

That the rates of freight charged and collected by the appellees in that case from the city of New York and other eastern points to West Point, LaGrange, Hogansville, Grantville, and Newnan, Ga., are more on each class than the amount charged and collected to the city of Opelika, which is a greater distance from the city of New York and other eastern points.

Trans. No. 70, p. 8.

That the transportation is of a like kind of freight; that the transportation to West Point, LaGrange, Hogansville, Grantville, and Newnan, is under substantially similar circumstances and conditions as the transportation to Opelika; and that said appellees had not been authorized by said Commission to charge less for longer than shorter distances for the transportation of said through freight.

Trans. No. 70, p. 7.

That the through rate charged and collected to West Point, LaGrange, Hogansville, Grantville, and Newnan is unreasonable and discriminating in its nature, and is in "violation of Section 4 of the Act of Congress, entitled 'An Act to Regulate Commerce.'"

Trans. No. 70, p. 8.

IX.

The Answers Filed Before the Interstate Commerce Commission in Case No. 70.

Among the answers filed before said Commission in case No. 70 was that of the Western Railway of Alabama, which denied in substance that the transportation of freight is done under substantially similar circumstances and conditions when done between New York and Opelika, as when done between New York and West Point, LaGrange, Hogansville, Grantville, and Newnan.

Trans. No. 70, p. 15.

Said answer denied that the rates charged to West Point, LaGrange, Hogansville, Grantville, and Newnan are unreasonable or discriminating in their nature.

Trans. No. 70, p. 15.

X.

The Order Made by the Interstate Commerce Commission in Case No. 70.

The order made by said Commission in case No. 70 orders the appellees, the Clyde Steamship Co., the South Carolina Railway Co., and D. H. Chamberlain, the Receiver thereof; the Georgia Railroad & Banking Co., the Louisville & Nashville Railroad Co., and the Central Railroad & Banking Company of Georgia, as lessees of the Georgia Railroad; H. M. Comer, Receiver of the Central Railroad & Banking Company of Georgia; the Richmond & Danville Railroad Co., and the Georgia Pacific Railway Co., as lessees of the Central Railroad of Georgia; F. W. Huidekoper and Reuben Foster, Receivers of said Richmond

& Danville Railroad Co., and the Atlanta & West Point Railroad Co.; that is to say, such of them as are operating, as common carriers, the Clyde Steamship Line, the South Carolina Railway, the Georgia Railroad, and the Atlanta & West Point Railroad, respectively, to cease and desist "from charging or receiving any greater compensation in the aggregate for the transportation of property from New York and other North Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, La-Grange, or West Point, in the State of Georgia, than they, together with the Western Railway Company of Alabama, charge or receive for the transportation of like kind of property from New York and other North Atlantic ports for the longer distance over the same line in the same direction to Opelika, in the State of Alabama, the shorter being included within the longer distance," etc.

Trans. No. 70, p. 20.

XI.

The Hearing Before the Interstate Commerce Commission.

Said cases, Nos. 69, 68, and 70, were heard, together with four other cases, by said Commission, and one report and opinion was filed by the Commission, in which it disposed of all seven of the cases.

A copy of said report and opinion will be found in Transcript No. 69, pp. 19 to 56; and also in 1 I. C. Rep., p. 121, under the style of Trammell vs. Clyde Steamship Co., et al.

Certain testimony was taken at said hearing which was considered by the Commission in each of said cases, so far as it was applicable thereto.

XII.

Proceedings in the Circuit Court of the United States.

The Interstate Commerce Commission filed a petition in the Circuit Court of the United States for the Northern District of Georgia, in each of the above entitled cases, to enforce the order of the Commission made therein.

The respective defendants to said petitions answered the same, denying the matters of equity therein alleged.

Additional testimony was taken in the Circuit Court, by each party, in each of said cases.

Under stipulation of counsel the testimony taken before the Commission was used in the Circuit Court in each of the above entitled cases, subject to objection as to its competency or relevancy in the particular case.

Trans. No. 69, pp. 73, 74.

XIII.

The Shorter and Longer Distance Points Involved in Case No. 69.

In case No. 69, the only shorter distance points involved are Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta. They are all local stations on the line of the Western & Atlantic Railroad between Chattanooga and Atlanta. The only longer distance point involved in that case is Atlanta.

Trans. No. 69, p. 22, right col.

The defendants in that case insist that the transportation of property from Cincinnati, and other Ohio River points, to Atlanta, is not conducted under substantially similar circumstances

and conditions as the transportation of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta.

XIV.

The Shorter and Longer Distance Points Involved in Case No. 68.

In case No. 68, the only shorter distance points involved are Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain. They are all local stations on the line of the Georgia Railroad between Augusta and Atlanta. The only longer distance point involved in that case is Atlanta.

Trans. No. 69, p. 26, left col.

The defendants in that case insist that the transportation of property from New York and other North Atlantic ports to Atlanta is not conducted under substantially similar circumstances and conditions as the transportation of property from New York and other North Atlantic ports to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain.

XV.

The Shorter and Longer Distance Points Involved in Case No. 70.

In case No. 70, the only shorter distance points involved are Newnan, Grantville, Hogansville, LaGrange and West Point. They are all local stations on the line of the Atlanta & West Point Railroad between Atlanta and Opelika, Ala. The only longer distance point involved in that case is Opelika.

Trans. No. 69, p. 33, right col.

The defendants in that case insist that the transportation of property from New York and other North Atlantic ports to Ope-

lika is not conducted under substantially similar circumstances and conditions as the transportation of property from New York and other North Atlantic ports to Newnan, Grantville, Hogansville, LaGrange and West Point.

XVI.

The Circumstances and Conditions which Affect the Transportation of Property from Cincinnati to Atlanta.

In case No. 69, with reference to the circumstances and conditions which affect the transportation of property to Atlanta, the Interstate Commerce Commission, in its Report and Opinion, says that freight is carried from Cincinnati to Atlanta over the Louisville & Nashville Railroad from Cincinnati to Nashville, thence over the Nashville, Chattanooga & St. Louis Railway to Chattanooga, thence over the Western & Atlantic Railroad to Atlanta.

That it is also carried from Cincinnati to Chattanooga over the Cincinnati, New Orleans & Texas Pacific Railway, and thence over the Western & Atlantic Railroad to Atlanta.

Trans. No. 69, pp. 23, 24.

The Commission reports other lines which reach Atlanta from Cincinnati, as follows:

C., N. O. & T. P. Ry., Cincinnati to Chattanooga; thence via the East Tennessee, Virginia & Georgia Ry. to Atlanta.

L. & N. R. R. Cincinnati to Nashville; thence N., C. & St. L. Ry. to Chattanooga; thence E. T., V. & G. Ry. to Atlanta.

C., N. O. & T. P. Ry., Cincinnati to Chattanooga; thence Chatanooga, Rome & Columbus R. R., to Kramer; and thence Georgia Pacific Ry. to Atlanta.

L. & N. R. R., Cincinnati to Nashville; thence N., C. & St. L. Ry. to Chattanooga; thence C., R. & C. R. R. to Kramer; thence Ga. Pacific Ry. to Atlanta.

L. & N. R. R. to Jellico; thence E. T., V. & G. Ry. to Atlanta.

Trans. No. 69, p. 24, left col.

The Commission reports that:

"There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia and Baltimore, and the transportation from these Atlantic points is either all-rail, or water-and-rail by the Atlantic Coast Line, Seaboard Air Line, Richmond & Danville, Norfolk & Western, and East Tennessee and others. The water lines run to the ports of Norfolk, Portsmouth, Charleston, Savannah, Brunswick and possibly through Port Royal and Jacksonville. From these ports, Atlanta is reached by rail; the South Carolina & Georgia Roads from Charleston, the Central of Georgia, the Savannah, Florida & Western and East Tennessee from Savannah; the East Tennessee from Brunswick; the Port Royal & Augusta Railway from Port Royal, the Queen & Crescent and Louisville & Nashville run from New Orleans; and Mobile stands on similar footing."

"There are also rail lines from various Mississippi and Ohio River points, which compete for Atlanta trade, such as Vicksburg, Greenville, Memphis, Cairo, Paducah, Evansville and Louisville."

Trans. No. 69, p. 24, left and right cols.

The Commission also reports that:

"The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like St. Louis, Baltimore, Cincinnati, etc., and with some modifications occurring from time to time, has been in effect for a considerable period."

Trans. No. 69, p. 24, right col., and 25 left col.

In the testimony taken in the Circuit Court in case No. 69, the following witnesses enumerate various transportation lines which actually and actively compete, and which actually and actively competed in 1892, as well from Ohio River points as from other sections of the country, for the transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H and F:

van den Berg, Trans. No. 69, pp. 112-114.
Culp, Trans. No. 69, pp. 124-126.
Brown, Trans. No. 69, pp. 148-151.
Lutz, Trans. No. 69, pp. 160-162.
Winburn, Trans. No. 69, pp. 168-169.
Knox, Trans. No. 69, pp. 176-179.
Biles, Trans. No. 69, pp. 188-190.

Witness Thompson files a statement of the tonnage carried from the eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31, 1893; and said statement shows the various competing lines by which said tonnage was carried.

Trans. No. 69, pp. 135, 205.

Said witness also files a classified statement of tonnage carried from points on and beyond the Ohio and Mississippi Rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala., to Atlanta, Ga., during the year ended March 31, 1893; and said statement shows the various competing lines by which said tonnage was carried.

Trans. No. 69, pp. 135, 203.

The statements filed by said Thompson show that the competition for the transportation of freight of the various classes to Atlanta affects a vast volume of traffic; and they show the result of the competition between the various lines which reach Atlanta, by showing the proportion which those lines have respectively carried of the competitive traffic.

XVII.

The Circumstances and Conditions which Affect the Transportation of Property from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta.

In case No. 69, with reference to the circumstances and conditions, which affect the transportation of property, from Cincinnati and other Ohio River points to the shorter distance points in that case, viz.: Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, the Interstate Commerce Commission reports that the Rome Railroad connects Kingston, Ga., with the East Tennessee, and Central of Georgia, at Rome, Ga. That from Marietta, the Marietta & North Georgia Railroad runs northerly 204 miles to Knoxville, Tenn., where it connects with the East Tennessee line, and also with the Knoxville, Cumberland Gap & Louisville Railroad, which extends 72 miles to Middlesboro, Ky., and there meets the Louisville & Nashville system, by which Cincinnati can be reached over a distance of 230 miles from Middlesboro. That from Cartersville, Ga., the East & West Railroad of Alabama runs westerly to Rock Mart, 22 miles, connecting with the East Tennessee, and 16 miles farther, it reaches the Central of Georgia, at Cedartown. The Commission says:

"Competition has not forced rates down at Kingston, Marietta or Cartersville. No railroad other than the Western & Atlantic runs to Calhoun, Adairsville, or Acworth."

Trans. No. 69, p. 25, left col.

In the testimony taken in the Circuit Court in case No. 69, the following witnesses testify that there is no such competition at Calhoun, Adairsville, Kingston and Acworth as is sufficient to

affect the rates charged by the two rail lines from Cincinnati and other Ohio River points to those stations. That at Cartersville and Marietta there is a slight indirect competition, but not of such a character as is sufficient to affect the rates charged by the direct rail line.

Brown, Trans. No. 69, p. 151.
Lutz, Trans. No. 69, p. 163.
Knox, Trans. No. 69, p. 181.
Biles, Trans. No. 69, p. 191.

The following witnesses testify in case No. 69 that there is strong competition existing from Cincinnati to Chattanooga, and that the rates fixed by that competition are used in making the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta; but that the same competition does not exist at those stations as at Atlanta.

Culp, Trans. No. 69, p. 127.
van den Berg, Trans. No. 69, pp. 114-115.

XVIII.

The Circumstances and Conditions which Affect the Transportation of Property from New York to Atlanta.

In case No. 68, with reference to the circumstances and conditions which affect the transportation of property from New York and other North Atlantic ports to Atlanta, the Interstate Commerce Commission, in its Report and Opinion says:

"The facts before stated with reference to the Chattanooga-Atlanta route in regard to competing lines for Atlanta traffic, including free delivery of freights at that point, apply also to this route," i. e., the route from New York via Augusta to Atlanta.

Trans. No. 69, p. 26, right col.

I have already shown in Section XVI. of this argument the facts that were stated by the Commission with reference to the circumstances and conditions which affect the transportation of property from Cincinnati and other Ohio River points to Atlanta; and as the Commission, in effect, admits that the same facts obtain with reference to the circumstances and conditions which affect the transportation of property from New York and other north Atlantic ports to Atlanta, I will not consume time and space in repeating those facts in this section.

In the testimony taken in the Circuit Court in case No. 68, the following witnesses enumerate various transportation lines which actually and actively compete, and which actually and actively competed in 1892, as well from New York and other north Atlantic ports, as from other sections of the country, for the transportation to Atlanta of freight classified as, 1, 2, 3, 4, 5, 6, A, B, C, D, E, H and F:

van den Berg, Trans. No. 68, pp. 62, 63, 64.
Culp, Trans. No. 68, pp. 82, 83, 84.
Compton, Trans. No. 68, pp. 92, 93, 94, 95, 96, 97.
Brown, Trans. No. 68, pp. 123, 124, 125.
Lutz, Trans. No. 68, pp. 131, 132.
Winburn, Trans. No. 68, pp. 139, 140.
Knox, Trans. No. 68, pp. 147, 148, 149, 150.
Biles, Trans. No. 68, pp. 158, 159, 160.

Witness Thompson in case No. 68 files a statement of tonnage carried from the eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31, 1893; and said statement shows the various competing lines by which said tonnage was carried.

Trans. No. 69, pp. 135, 205.

Said witness also files a classified statement of tonnage carried from points on and beyond the Ohio and Mississippi Rivers, and

from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala., to Atlanta, Ga., during the year ended March 31, 1893; and said statement shows the various competing lines by which said tonnage was carried.

Trans. No. 69, pp. 135, 136, 203, 204.

The statements filed by said Thompson show that the competition for the transportation of freight of the various classes to Atlanta affects a vast volume of traffic; and they show the result of the competition between the various lines which reach Atlanta, by showing the proportions which those lines have respectively carried of the competitive traffic.

XIX.

The Circumstances and Conditions which Affect the Transportation of Property from New York to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain.

In case No. 68 with reference to the circumstances and conditions which affect the transportation of property from New York and other North Atlantic ports to the shorter distance points in that case, viz.: Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain, the Interstate Commerce Commission reports that:

"Of the intermediate points mentioned, namely, Greensboro, Madison, Social Circle, Conyers, Covington and Stone Mountain, only two, Madison and Social Circle, are junction points. At Madison, the Georgia Railroad connects with the branch of the Richmond & Danville running between Macon and Lula on the Atlanta & Charlotte Division of the main line. The distance from Lula to Madison is 72 miles; the distance from Lula to

Atlanta by the Richmond & Danville is 66 miles; practically the same distance. At Social Circle, the Georgia Railroad connects with the Gainesville, Jefferson & Southern Railroad, which extends from Social Circle to Gainesville, a distance of 52 miles, where it connects with the Atlanta & Charlotte Division of the Richmond & Danville line. The distance from Atlanta to Gainesville by the Richmond & Danville is 53 miles, about the same as from Social Circle to Gainesville." . . . "The fact that different lines run to these two points has not compelled reductions in rates thereto, but it was stated in evidence that the fact of direct railroad connection between Madison and Macon would soon be likely to cause a lowering of rates to Madison, the short water-and-rail route from New York being through Brunswick and Macon.

Trans. No. 69, p. 27, left and right cols.

In the testimony taken in the Circuit Court in Case No. 68, the following witnesses testify that there is no such competition at Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, as there is at Atlanta; though the competition which compels existing rates to Augusta and Atlanta is recognized in fixing rates to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain; and so far as the carriage from New York and other north Atlantic ports to Atlanta and Augusta is concerned, traffic to said local points is as competitive as if destined to stop at Atlanta or Augusta proper.

van den Berg, Trans. No. 68, pp. 64, 65.

Davant, Trans. No. 68, p. 76.

Culp, Trans. No. 68, p. 84.

Brown, Trans. No. 68, p. 125.

Lutz, Trans. No. 68, p. 133.

Knox, Trans. No. 68, p. 151.

Biles, Trans. No. 68, p. 161.

XX.

The Circumstances and Conditions which Affect the Transportation of Property from New York to Opelika.

In case No. 70, with reference to the circumstances and conditions which affect the transportation of property from New York and other North Atlantic ports to Opelika, Ala., the Interstate Commerce Commission in its Report and Opinion says:

"The route here is water and rail from New York and other North Atlantic ports via the Clyde Steamship Line to Charleston, the South Carolina Railway to Augusta, the Georgia Railroad to Atlanta and the Atlanta & West Point and Western Railway of Alabama to the destinations mentioned in the complaint, which are Newnan, Grantville, Hogansville, LaGrange and West Point, shorter distance stations, and Opelika, the longer distance point."

Trans. No. 69, p. 33, right col.

"The distance by the Central of Georgia from Savannah to Atlanta is 295 miles, 13 miles less than the distance from Charleston to Atlanta. The distance from Savannah to Augusta by the Central of Georgia is 132 miles, 5 miles less than the mileage from Charleston to Augusta by the South Carolina Road. The distance from Savannah to Opelika by the Central of Georgia through Macon and Columbus is 321 miles, 26 miles less than the distance to Newnan, the first shorter distance point over the route from Charleston, and only 13 miles greater than the distance from Charleston to Atlanta. The Central of Georgia route, Savannah to Opelika, is with the exception of the 29 miles from Columbus, wholly in the State of Georgia. Freights can be shipped by the Central of Georgia from Savannah, through Opelika to West Point and LaGrange, and carried over a less distance than by the route from Charleston or the

route from Savannah, through Augusta or Atlanta. It is only 6 miles farther to Hogansville via Savannah and Opelika than from Charleston; only 20 miles greater distance to Grantville, and but 44 miles farther to Newnan. There is a still shorter route from Savannah to Opelika, namely, the Central of Georgia to Lyons, 75 miles, the Savannah, Americus & Montgomery, called the 'Sam' road, to Americus, 124 miles, and the Central System to Opelika, 93 miles, or 292 miles in all. It is a less distance by this route from Savannah through Opelika to all the shorter distance stations named in the complaint, except Newnan, than from Charleston.

"From the port of Brunswick, Ga., Opelika can be reached by the Savannah, Florida & Western to Albany, 169 miles, and the Central of Georgia to Opelika, 124 miles, or a distance of 298 miles through. It is nearer from Brunswick via Opelika to all the shorter distance points in this case, except Newnan, than to these points from Charleston, via Atlanta, and it is only 21 miles farther to Newnan from Brunswick than from Charleston.

"But Savannah traffic can also reach Newnan by the Central of Georgia to Griffin and its Chattanooga Division over a short distance of 288 miles, 7 miles less than the distance from Savannah to Atlanta, and 20 miles less than from Charleston to Atlanta."

Trans. No. 69, p. 34, left and right cols.

"As shown by the findings applicable to this route, water and rail lines through Savannah and Brunswick can reach all the shorter distance points through Opelika, the longer distance point, except Newnan, over a shorter rail mileage than by this route from Charleston. The water lines to Savannah and Brunswick do not touch at Charleston, and the difference in distance by water from New York and other points to Charleston, Savannah or Brunswick is in view of the low cost of water carriage too inconsiderable to affect the merits of the case. The actual

routing of the freight over these competing routes, which also reach Atlanta, and one of them, Newnan, by direct lines from the seaboard, is not shown, they not being parties to the case. We assume that it would be for the advantage of the Central road taking freight from steamer at Savannah for West Point, or even LaGrange, to route it through Opelika, the longer distance point in this case, for its carrying distance would be longer than by delivering at Atlanta or Newnan."

Trans. No. 69, p. 55, left and right cols.

In his testimony given in case No. 70, Mr. Lutz states that the distance from New York to Opelika via steamship to Charleston, Augusta and Atlanta is 668 miles; that the distance from New York to Opelika via Charleston, Augusta, Macon, and the Central of Georgia Railway is 642 miles; that the distance from New York to Opelika via Ocean to Savannah and the Central of Georgia Railway is 570 miles; that the distance from New York to Opelika via Ocean to Savannah and thence via the Georgia & Alabama (formerly the Savannah, Americus & Montgomery) Railway to Americus, and thence by the Central of Georgia Railway is 542 miles; and that the distance from New York to Opelika via Ocean to Brunswick and via the Brunswick & Western Railroad and Columbus Southern (now a part of the Georgia & Alabama Railroad) and the Central of Georgia Railway is 548 miles.

Trans. No. 70, p. 115.

In the testimony taken in the Circuit Court in case No. 70, the following witnesses enumerate various transportation lines, which actually and actively competed in 1892, and now compete, as well from New York and other north Atlantic ports, as from other sections of the country, for the transportation to Opelika of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F:

Culp, Trans. No. 70, pp. 66, 67, 68.

van den Berg, Trans. No. 70, pp. 78, 79, 80.

Compton, Trans. No. 70, pp. 95, 96, 97, 98, 99.

Brown, Trans. No. 70, pp. 108, 109.
Lutz, Trans. No. 70, pp. 114, 115, 116.
Knox, Trans. No. 70, pp. 124, 125.
Biles, Trans. No. 70, pp. 142, 143.

Witness Hunter, in his testimony in case No. 70, states that the tonnage from eastern cities to Opelika for the year ended March 31, 1896, was carried to that point by the following lines and in the following proportions:

Via Savannah and the Central Railway, 45.3%; via Montgomery and the Western Railway, 24.1%; the Clyde Line, via Charleston and the Georgia Railroad and Atlanta & West Point Railroad, 1.1%; other lines with the Georgia Railroad and the Atlanta & West Point, 1.6%; the Southern Railway and Atlanta & West Point Railroad, 24.6%; Seaboard Air Line and Atlanta & West Point Railroad, 3.3%.

Trans. No. 70, p. 136.

XXI.

The Circumstances and Conditions which Affect the Transportation of Property from New York to Newnan, Grantville, Hogansville, LaGrange and West Point.

In case No. 70, with reference to the circumstances and conditions which affect the transportation of property from New York and other North Atlantic ports to the shorter distance points in that case, namely, Newnan, Grantville, Hogansville, LaGrange and West Point, witnesses whose testimony was taken in the Circuit Court in that case, testify that at Newnan, the Central Railway is the only railroad besides the Atlanta & West Point Railroad.

Knox, Trans. No. 70, p. 131.
Hunter, Trans. No. 70, p. 138.

Culp, Trans. No. 70, p. 71.
van den Berg, Trans. No. 70, p. 82.
Compton, Trans. No. 70, p. 107.

The witnesses testify that at LaGrange, the Macon & Birmingham Railroad is the only railroad besides the Atlanta & West Point Railroad.

Knox, Trans. No. 70, p. 131.
Hunter, Trans. No. 70, p. 138.
Culp, Trans. No. 70, p. 72.
van den Berg, Trans. No. 70, p. 82.
Compton, Trans. No. 70, p. 107.

At Grantville and Hogansville, there is no railroad other than the Atlanta & West Point Railroad.

van den Berg, Trans. No. 70, p. 81.
Compton, Trans. No. 70, p. 107.

At West Point, the Atlanta & West Point Railroad and the Western Railway of Alabama are the only railroads; and they are under a common management and control.

van den Berg, Trans. No. 70, p. 81.

The witnesses testify in case No. 70, that there is no competition existing at Newnan, Grantville, Hogansville, LaGrange and West Point to affect rates, like the competition which exists at Opelika.

Brown, Trans. No. 70, p. 110.
Lutz, Trans. No. 70, p. 118.
Biles, Trans. No. 70, p. 144.

They testify, however, that in fixing rates from eastern cities to Grantville, Hogansville, and West Point, the competition that forces the existing rates to Atlanta and Opelika has been recognized; and that so far as the carriage from New York and other North Atlantic ports to Atlanta or Opelika is concerned, traffic

for Grantville, Hogansville and West Point is as competitive as if it were destined to Atlanta or Opelika proper.

van den Berg, Trans. No. 70, pp. 81, 82.

In other words, the witnesses mean to say with reference to traffic shipped from New York and other north Atlantic ports destined to Grantville, Hogansville and West Point, that its carriage from New York and other north Atlantic ports to Atlanta, or Opelika, is as competitive for that distance, as if it were destined to stop at Atlanta or Opelika.

XXII.

How Rates are Made from Cincinnati to Atlanta.

In case No. 69, with reference to how rates are made from Cincinnati and other Ohio River points to Atlanta, the Commission reports that:

"The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like St. Louis, Baltimore, Cincinnati, etc., and with some modifications occurring from time to time, has been in effect for a considerable period."

Trans. No. 69, p. 24 right col., and p. 25 left col.

XXIII.

How Rates are Made from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta.

In case No. 69, with reference to how rates are made from Cincinnati and other Ohio River points, to the shorter distance points in that case, viz.: Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, the Interstate Commerce Commission reports that:

The " charges to all points north of Atlanta and south of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga " to said shorter distance points, respectively.

Trans. No. 69, p. 23, left col.

The following witnesses testify in case No. 69, that various transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga:

van den Berg, Trans. No. 69, p. 112.
Culp, Trans. No. 69, pp. 124, 125.
Brown, Trans. No. 69, p. 143.
Lutz, Trans. No. 69, pp. 159, 160.
Knox, Trans. No. 69, p. 175.
Biles, Trans. No. 69, p. 188.

The following witnesses testify in case No. 69, that, in their opinion, the rates from Cincinnati to Chattanooga are just and reasonable; and they set forth their reasons for the opinions so expressed:

van den Berg, Trans. No. 69, p. 112.
Culp, Trans. No. 69, p. 125.
Brown, Trans. No. 69, p. 143.
Lutz, Trans. No. 69, p. 160.
Knox, Trans. No. 69, p. 175.
Biles, Trans. No. 69, p. 188.

Witness Brown testifies in case No. 69 that the rates charged by the Western & Atlantic Railroad from Chattanooga to Western & Atlantic local stations are in accordance with the standard tariff rate of the Railroad Commission of Georgia. That upon only three roads in the State of Georgia is the Standard tariff operated, namely, the Western & Atlantic Railroad, the Rome Railroad (operated by the Western & Atlantic R. R.), and the Georgia Railroad. All other roads in Georgia (except the Rome R. R. and the Georgia R. R.), are allowed certain percentages

of increase over the standard tariff except on certain classes; and those increases range from 10 to 50 per cent. Trans. No. 69, pp. 138, 139. Or to state it differently, the other railroads in Georgia (except the Rome R. R. and the Georgia R. R.), are allowed by the Commission of that State to charge from 10 to 50 per cent. more (except upon certain classes) than the Western & Atlantic Railroad is allowed to charge. In a word, the combination rates from Cincinnati and other Ohio River points to the shorter distance points involved in case No. 69, viz.: Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta are made by adding the severely competitive rates which prevail from Cincinnati and other Ohio River points to Chattanooga (and which, owing to that competition, are very low) to the local rates of the Western & Atlantic Railroad from Chattanooga to destination, which local rates are (except upon certain classes) from 10 to 50 per cent. less than those charged by any other railroad in Georgia, except the Rome Railroad and the Georgia Railroad.

The following witnesses testify in case No. 69, that the combination rates from Cincinnati to said shorter distance points are, in their opinion, just and reasonable, and they state the reasons for the opinions which they express:

van den Berg, Trans. No. 69, pp. 111, 112.
Culp, Trans. No. 69, p. 124.
Brown, Trans, No. 69, pp. 140, 141.
Lutz, Trans. No. 69, p. 159.
Winburn, Trans. No. 69, p. 168.
Knox, Trans. No. 69, p. 174.
Biles, Trans. No. 69, p. 188.

The Court will notice that the local stations on the Western & Atlantic Railroad which are involved in case No. 69 have the benefit of all the competition which exists at Chattanooga, though the nearest one of those stations is 60 miles distant from

Chattanooga; and that the real ground of complaint in case No. 69 is that these stations are not also given the benefit of the competition at Atlanta, though the nearest one of those stations is 21 miles north of Atlanta.

Persons living at Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta would be perfectly willing to pay combination rates made by adding the very low competitive rates from Cincinnati to Chattanooga, to the local rates fixed by the Georgia Railroad Commission from Chattanooga to those local stations, respectively, were it not for the fact that the same line is carrying the same kind of property through those local stations to Atlanta, a farther distant point, for less rates than are charged from Cincinnati and other Ohio River points to those local stations. In other words, their complaint is not that the rates charged them are too high, but that the rates charged to Atlanta are too low, as compared with their rates.

XXIV.

How Rates are Made from New York to Atlanta.

In case No. 68, with reference to how rates are made from New York and other North Atlantic ports to Atlanta, the Interstate Commerce Commission, in its Report and Opinion, says:

"There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia, and Baltimore, and the transportation from these Atlantic points is either all-rail, or water-and-rail by the Atlantic Coast Line, Seaboard Air Line, Richmond & Danville, Norfolk & Western, and East Tennessee and others. The water lines run to the ports of Norfolk, Portsmouth, Charleston, Savannah, Brunswick, and possibly through Port Royal and Jacksonville. From these ports, Atlanta is reached by rail; the South Carolina and Georgia roads from Charleston, the Central of Georgia, the

Savannah, Florida & Western, and East Tennessee from Savannah; the East Tennessee from Brunswick; the Port Royal & Augusta Railway from Port Royal," etc.

Trans. No. 69, p. 24, left and right cols.

The Commission also reports that:

"The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like St. Louis, Baltimore, Cincinnati, etc., and with some modifications occurring from time to time, has been in effect for a considerable period."

Trans. No. 69, p. 24 right col. and 25 left col.

XXV.

How Rates are Made from New York to Greensboro, Madison, Social Circle, Covington, Co[illegible], and Stone Mountain.

In case No. 68, with reference to how rates are made from New York and other North Atlantic ports to the shorter distance points in that case, viz.: Greensboro, Madison, Social Circle, Covington, Conyers, and Stone Mountain, the Interstate Commerce Commission reports that:

"Rates to points intermediate between Augusta and Atlanta are combination rates, made up of rates to the terminal points, with locals added. Charges to these intermediate points are based as follows: Greensboro and Madison on the Augusta rate; Social Circle, classes 1 and B, on Atlanta; classes 3, 4, 5, 6, A, C, D, E, H and F, on Augusta, class 2 on either Augusta or Atlanta; Covington, classes 1, 2, 3, A and B, on Atlanta, the others on Augusta; Conyers, classes 1, 2, 3, 4, A, B and H, on Atlanta, classes 6, C, D, E and F, on Augusta, and class 3 (?) on either; Stone Mountain, classes D and F, on Augusta, class C on either, and the other classes on Atlanta.

" When rates are based on Atlanta, they consist of the charge through the point of destination to Atlanta plus the local back."

Trans. No. 69, p. 26, right col.

In case No. 68, it is proven that the rates from New York and other North Atlantic ports to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain are made upon the lowest obtainable combination, Atlanta or Augusta governing, as the case may be, as the base point. In other words, in the adjustment of totals, the local points are given the benefit of the competition which compels the existing rates to Augusta and Atlanta, respectively, and also the benefit of the rates fixed by the Georgia Railroad Commission to be charged by the Georgia Railroad from Augusta or Atlanta, respectively, to those local points.

van den Berg, Trans. No. 68, p. 62.
Davant, Trans. No. 68, p. 74.
Culp, Trans. No. 68, p. 82.
Brown, Trans. No. 68, pp. 123, 124.
Winburn, Trans. No. 68, p. 139.

The following witnesses testify in case No. 68, that the combination rates from New York and other North Atlantic ports to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain are, in their opinion, just and reasonable, and they state the reasons for the opinions which they express:

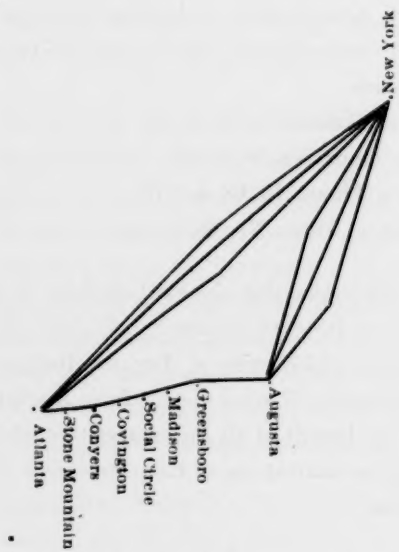
van den Berg, Trans. No. 68, p. 62.
Davant, Trans. No. 68, p. 74.
Culp, Trans. No. 68, p. 82.
Compton, Trans. No. 68, p. 93.
Brown, Trans. No. 68, pp. 123, 124.
Lutz, Trans. No. 68, pp. 130, 131.
Winburn, Trans. No. 68, p. 139.
Knox, Trans. No. 68, p. 147.
Biles, Trans. No. 68, pp. 158, 159.

It is proven in case No. 68 that the rates from New York and other North Atlantic ports to Augusta and Atlanta are controlled by water competition to and through the ports of Savannah and Brunswick.

Davant, Trans. No. 68, p. 76.
Culp, Trans. No. 68, p. 84.
Brown, Trans. No. 68. p. 126.
Winburn, Trans. No. 68, p. 141.

The Court will notice that the local stations on the Georgia Railroad which are involved in case No. 68, have the benefit of all the competition which exists at Augusta, though the nearest one of those stations is 83 miles distant from Augusta; and that they also have the benefit of all the competition which exists at Atlanta, though the nearest one of those stations is 16 miles distant from Atlanta.

The following diagram sufficiently illustrates the situation involved in case No. 68, it being remembered that there are numerous competing routes from New York to Atlanta, as well as from New York to Augusta; some of which competing lines are all-rail, and some of them part water and part rail, and in the case of Augusta, one of them is all-water, (via the ocean and the Savannah River).



A mere glance at said diagram is sufficient to show that persons living at Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain, in shipping from New York, via Augusta, would be perfectly willing to pay combination rates made by adding the very low competitive rates from New York and other North Atlantic ports to Augusta, to the local rates fixed by the Georgia Railroad Commission from Augusta to those local stations, respectively, were it not for the fact that the same line is carrying the same kind of property through those local stations to Atlanta, a farther distant point, for less rates than are charged from New York and other North Atlantic ports, via Augusta, to those local stations. In other words, their real complaint is, not that the rates charged them are too high, but that the rates charged to Atlanta are too low as compared with their rates.

In this connection, it will be remembered that the local rates of the Georgia Railroad, prescribed by the Railroad Commission of Georgia, are what are termed the Georgia Standard Rates, and that only three roads in the State are required to use the standard rates, viz.: the Western & Atlantic Railroad, the Rome Railroad, and the Georgia Railroad. All other roads in that State are allowed by the Georgia Railroad commission to use rates that are higher than the standard rates.

Trans. No. 68, pp. 123, 124.

Persons living at the local stations on the Georgia Railroad which are involved in case No. 68, not only have a choice between the very low competitive rates prevailing at Augusta and Atlanta, respectively, but they have also the benefit of lower local rates to those stations from Augusta or Atlanta, respectively, than are charged by any other road in Georgia except the Western & Atlantic Railroad and the Rome Railroad.

XXVI.

How Rates are Made from New York to Opelika.

In case No. 70, with reference to how rates are made from New York and other North Atlantic ports to Opelika, in the testimony taken in the Circuit Court in case No. 70, the following witnesses enumerate various transportation lines, which actually and actively competed in 1892, and now compete, as well from New York and other North Atlantic ports as from other sections of the country for the transportation to Opelika of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F:

Culp, Trans. No. 70, pp. 66, 67, 68.
van den Berg, Trans. No. 70, pp. 78, 79, 80.
Compton, Trans. No. 70, pp. 95, 96, 97, 98, 99.
Brown, Trans. No. 70, pp. 108, 109.

Lutz, Trans. No. 70, pp. 115, 116.
Knox, Trans. No. 70, pp. 124, 125.
Biles, Trans. No. 70, pp. 142, 143.

Witness Hunter, in his testimony in case No. 70, states that the tonnage from eastern cities to Opelika for the year ended March 31, 1896, was carried to that point by the following lines and in the following proportions:

Via Savannah and the Central Railway, 45.3%; via Montgomery and the Western Railway, 24.1%; the Clyde Line via Charleston and the Georgia Railroad and Atlanta & West Point Railroad, 1.1%; other lines with the Georgia Railroad and the Atlanta & West Point 1.6%; the Southern Railway and Atlanta & West Point Railroad 24.6%; Seaboard Air Line and Atlanta & West Point Railroad 3.3%.

Trans. No. 70, p. 136.

XXVII.

How Rates are Made from New York to Newnan, Grantville, Hogansville, LaGrange and West Point.

In case No. 70, with reference to how rates are made from New York and other North Atlantic ports to the shorter distance points in that case, viz.: Newnan, Grantville, Hogansville, LaGrange and West Point, the testimony taken in the Circuit Court in that case shows that the rates from New York and other North Atlantic ports to Grantville, Hogansville, and LaGrange are combination rates, made up of the rates from New York and other North Atlantic ports to Atlanta and the local rates of the Atlanta & West Point Railroad from Atlanta to destination.

Lutz, Trans. No. 70, p. 119.

On the first six classes, the rates to West Point are combination rates, made up of the rates from New York and other North

Atlantic ports to Opelika and the local rates of the Western Railway of Alabama from Opelika to destination.

Lutz, Trans. No. 70, p. 119.

Rates to Newnan are less than any combination that can be made either on Atlanta or Opelika.

van den Berg, Trans. No. 70, p. 81.

Mr. Lutz testifies in case No. 70 that the local rates charged by the Atlanta & West Point Railroad from Atlanta to Newnan, Grantville, Hogansville, LaGrange and West Point are exactly and identically the rates that said company is directed and ordered to charge by the Georgia Railroad Commission, and are practically the same as are charged for similar distances by other roads in the State of Georgia.

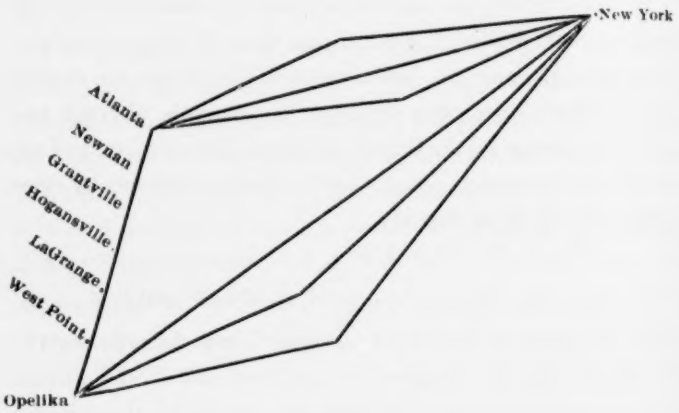
Trans. No. 70, p. 114.

The following witnesses testify, in case No. 70, that the combination rates from New York and other North Atlantic ports to Newnan, Grantville, Hogansville, LaGrange and West Point are just and reasonable, and they state the reasons for the opinions which they express:

Lutz, Trans. No. 70, p. 116.
Culp, Trans. No. 70, pp. 68, 69.
van den Berg, Trans. No. 70, p. 81.
Compton, Trans. No. 70, p. 99.
Brown, Trans. No. 70, p. 110.
Knox, Trans. No. 70, p. 126.
Biles, Trans. No. 70, p. 144.

The Court will notice that the local stations on the Atlanta & West Point Railroad which are involved in case No. 70, have the benefit of all the competition which exists at Atlanta, though the nearest one of those stations is 39 miles distant from Atlanta; and that they also have the benefit of all the competition which exists at Opelika, though the nearest one of those stations is 22 miles distant from Opelika.

The following diagram sufficiently illustrates the situation involved in case No. 70, it being remembered that there are numerous competing routes from New York to Opelika, as well as from New York to Atlanta; some of which competing routes are all-rail and some of them part-water and part-rail:



A mere glance at said diagram is sufficient to show that persons living at Newnan, Grantville, Hogansville, LaGrange and West Point, in shipping from New York, via Atlanta, would be perfectly willing to pay combination rates made by adding the very low competitive rates from New York and other North Atlantic ports to Atlanta and the local rates fixed by the Georgia Railroad Commission from Atlanta to those local stations respectively, were it not for the fact that the same line is carrying the same kind of property through those local stations to Opelika, a farther distant point, for less rates than are charged from New York and other North Atlantic ports to those local stations.

XXVIII.

ARGUMENT.

The Section of the Act to Regulate Commerce Upon which the Orders Made by the Commission in These Cases Were Based.

The Commission did not base the orders made by it in these cases either upon the first section, which relates to the reasonableness of rates, nor upon the second section, which relates to unjust discrimination in rates, nor upon the third section, which relates to unjust prejudice in rates. The Commission based said orders upon the fourth section alone, it being the section which relates to charging more for a short than for a long haul.

The material parts of the orders have been heretofore copied in Sections IV., VII. and X. of this argument, and they show upon their face that said orders are based alone upon what is known as the long and short haul clause of the fourth section. They enjoin the defendants in the respective cases to cease and desist "from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property" for a "shorter distance" (to certain designated local stations) "than for the longer distance over the same line in the same direction" (to a certain designated farther distant point), "the shorter being included within the longer distance." The words in quotation marks are taken literally from the long and short haul clause of the fourth section, and they cannot be found in any other section of the Act. Every other issue that might have been decided by the Commission was treated by it as subordinate, or at least as "subsidiary" to the issue which was made upon the fourth section. Upon this point the Commission says:

"In view of the fact that the issues present mainly a single

question of violation of the fourth section, the decision of which will also involve the disposition of the *subsidiary* matters of unreasonable and discriminating rates alleged and denied herein, it seems unnecessary to further analyze the pleadings."

Trans. No. 69, p. 22, right col.

Again, the Commission says:

"As these cases all stand upon the charge of violation of the long and short haul clause, the fourth section of the Statute, it becomes necessary to consider whether the defendants are justified in their conceded disregard of the prohibitive part of the provision. The point of the defense is that the transportation for shorter distances is under circumstances and conditions which are substantially dissimilar to those surrounding the transportation to the longer distance points; and this upon the assumption that they may, in any case, determine the question for themselves in the first instance."

Trans. No. 69, p. 38, left col.

The Commission then enters upon an exhaustive discussion of the meaning of the phrase, "substantially similar circumstances and conditions;" and that discussion is continued through many pages of the Report and Opinion.

A mere reading of the Report and Opinion, however carelessly or carefully it may be done, is sufficient to satisfy any one that the Commission intended to base its orders in these cases alone upon the long and short haul clause of the fourth section.

XXIX.

The Orders Made by the Commission in These Cases Are Not Lawful Under the Fourth Section of the Act.

The Commission reports that:

"There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia and Baltimore, and the transportation from these Atlantic points is either all rail, or water and rail, by the Atlantic Coast Line, Seaboard Air Line, Richmond & Danville, Norfolk & Western, and the East Tennessee and others."

Trans. No. 69, p. 24, left col.

Again the Commission says:

"The Queen & Crescent and Louisville & Nashville run from New Orleans; and Mobile stands on similar footing."

"There are also rail lines from various Mississippi and Ohio River points, which compete for Atlanta trade, such as Vicksburg, Greenville, Memphis, Cairo, Paducah, Evansville and Louisville."

Trans. No. 69, p. 24, right col.

Again, the Commission says:

"The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications, occurring from time to time, has been in effect for a considerable period."

Trans. No. 69, pp. 24 right col., and 25 left col.

Again the Commission says:

"The strife for trade between different markets seeking trans-

portation for like commodities to the same locality is undoubtedly one of the most potent commercial forces of our time."

Trans. No. 69, p. 48 left col.

It will be noticed that the Commission concedes that there exists at Atlanta not only competition between carrier and carrier, but also competition between market and market. It will be noticed that the Commission concedes that competition between different markets is one of the most potent commercial forces of our time; and that the present adjustment of rates to Atlanta is not only affected by competition, but is in fact the "outcome of severe competition" between two or more competing railroads leading from the same market to Atlanta, or between competing railroads leading to Atlanta from two or more competing markets.

In Section XX. of this argument I have shown that at Opelika, also, there is competition between carrier and carrier, and between market and market.

The Commission holds, however, that "the competition of carriers *subject to the Act to Regulate Commerce* does not create circumstances and conditions which the carriers can take into account in determining for themselves, in the first instance, whether they are justified, under the fourth section, in charging more for shorter than for longer distances over their lines."

Trans. No. 69, p. 20, head note No. 6.

The Commission also holds that:

"The competition of markets on different lines (of transportation) for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified, under the fourth section, in charging more for shorter than for longer distances over their lines."

Trans. No. 69, p. 20, head note No. 7.

In the case of the Interstate Commerce Commission vs. Alabama Midland Railway Co., this Court says:

"We are unable to suppose that Congress intended by the fourth section, and the proviso thereto, to forbid common carriers, in cases where the circumstances and conditions are substantially dissimilar, from making different rates until and unless the Commission shall authorize them so to do," etc.

168 U. S., p. 169.

175 U. S., 669, Louisville, etc., R. R. Co. vs. Behlmer.

Again this Court says:

"That competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to Regulate Commerce, has been held by many of the Circuit Courts."

I. C. C. vs. Ala. Midland Ry. Co., 168 U. S., p. 164.

93 Fed. Rep., p. 87, I. C. C. vs. W. & A. R. R. Co. et al.

175 U. S., 667, Louisville, etc., R. R. Co. vs. Behlmer.

It will be seen that this Court overruled the doctrine announced by the Commission in these cases to the effect that "the competition of carriers subject to the Act to Regulate Commerce, does not create circumstances and conditions which the carriers can take into account in determining for themselves, in the first instance, whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines." As this Court has overruled the construction which the Commission placed upon the fourth section, and upon which construction the Commission based the orders made by it in these cases, I submit that those orders are not lawful under the fourth section.

The Commission in its Eleventh Annual Report, in comment-

ing upon the decision of this Court in the Alabama Midland Case, says:

"The defendants (i. e. in the Alabama Midland Case) insisted that the fact of *railway competition* at Montgomery made the circumstances and conditions at Troy and at Montgomery dissimilar, and that, therefore, the inhibition of the fourth section did not apply. The Commission had held in many previous cases, and held in this case (i. e., the Alabama Midland Case), that *railway competition* between carriers *subject to the provisions of the Act* could not of itself create the necessary dissimilarity in circumstances and conditions. This contention is not sustained by the Supreme Court, which holds that such competition does create that dissimilarity, and that the higher rate to Troy is not prohibited by the fourth section."

The italics are mine.

11 Ann. Rep., I. C. C. (1897), p. 43.

Again, the Commission says:

"That section (i. e., the fourth) enacts that the carrier shall not charge more for the short than for the long haul under substantially similar circumstances and conditions. If the circumstances and conditions are similar, the greater charge cannot be made. If the circumstances and conditions are not similar, the section does not apply. The Court holds (i. e. in the Alabama Midland Case) that *railway competition* of controlling force makes the circumstances dissimilar. If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point."

11 Ann. Rep., I. C. C. (1897), p. 43.

Again, the Commission says:

"On November 8, 1897, the Supreme Court held, in the case

entitled Interstate Commerce Commission vs. Alabama Midland Ry. Co. et al. (the Troy Case, 168 U. S., ——-), that *railroad competition* may create discriminating (dissimilar?) circumstances and conditions under the fourth section and thereby justify greater charges for the shorter haul."

11 Ann. Rep., I. C. C. (1897), p. 91.

In the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co. et al., decided December 31, 1897, the Commission in speaking of the defense relied upon in certain instances in that case, says:

"In all other instances, the justification relied upon is the existence of railway competition between carriers subject to the Act to Regulate Commerce. The Commission has uniformly held, up to the present time, that this species of competition does not create the necessary dissimilarity of circumstances and conditions under that section, and such would have been its decision in this case upon the law as it was supposed to be when the findings of fact were prepared. Since then, however, the Supreme Court of the United States by its decision in the case, *Interstate Commerce Commission vs. Alabama M. R. Co.*, decided November 8th, 1897, 168 U. S., 144, 42 L. Ed. ——, has determined that this view of the law is erroneous, and that railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. Under this interpretation of the law as applied to the facts found in this case, we are of the opinion that the charging of a higher rate to the intermediate points, as set forth, is not obnoxious to the fourth section. The section declares that the carrier shall not make the higher charge to the nearer point under 'substantially similar circumstances and conditions.' If the conditions and circumstances are not substantially similar, then the section does not apply and the carrier is not bound to regard it in the making of its tariffs. The Court has decided

that railway competition, if it exists, must be considered. If, therefore, such competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate at the intermediate point and the higher rate is not prohibited by the fourth section."

7 I. C. Rep., pp. 479, 480, Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co. et al.

175 U. S., 670, Louisville, etc., R. R. Co. vs. Behlmer.

It will be seen that the Commission expressly concedes that the doctrine announced by it in the cases at bar, to the effect that the competition of carriers subject to the Act to Regulate Commerce does not create circumstances and conditions which the carriers can take into account, has been overruled by this Court in the Alabama Midland case.

XXX.

The Fourth Section Continued.

Counsel for appellant will doubtless rely upon the opinion of Judge Severens in the case of Interstate Commerce Commission vs. East Tennessee, Virginia & Georgia Railroad Co. et al. (known as the Chattanooga Board of Trade case), 85 Fed. Rep., p. 117.

In that case Judge Severens, referring to the decision of the Commission in the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Railway Co., et al., says that the Commission, "evidently disheartened by the adverse rulings of the Supreme Court in recent cases," . . . "seems to give up section 4 as of no force or effect in any case where the conditions are not 'substantially similar.'"

85 Fed. Rep., 117.

The Judge, after referring to the language quoted by me, in the last preceding section of this argument, from the decision of the Commission in that case, says:

"Now, I do not understand that such a conclusion follows from that decision (i. e., the decision of the Supreme Court in the Alabama Midland Railway case). On the contrary, I suppose that when a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination, whether the conditions are similar, and if dissimilarity is found, *then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of.* . . . In other words, my opinion is that the restraint of *section 4* is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent, *under that section,* to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

I. C. C. vs. E. T. V. & G. Ry. Co., et al., 85 Fed. Rep., p. 118.

I respectfully submit that there is manifest error in Judge Severens' construction of the fourth section. It is a construction which has never been given to that section by any other court; nor by the Commission in any of its decisions. The material part of section 4 is as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance."

In Re Southern Ry. & S. S. Association (sometimes cited as In Re L. & N. R. R. Co.), 1 I. C. Rep., p. 280, Judge Cooley in speaking of the effect of the introduction into the fourth section of the phrase, "under substantially similar circumstances and conditions," said:

"Here we have clearly stated what is unlawful and forbidden; and for doing the unlawful and forbidden act penalties are then provided. But that which the act does not declare unlawful must remain lawful if it were so before; and that which it fails to forbid, the carrier is left at liberty to do without permission of any one. The charging or receiving the greater compensation for the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar circumstances and conditions; and, therefore, if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, SINCE IF THE CIRCUMSTANCES AND CONDITIONS OF THE TWO HAULS ARE DISSIMILAR THE STATUTE IS NOT VIOLATED."

This language of Judge Cooley was quoted approvingly by Judge Ross, in the case of I. C. C. vs. A. T. & S. F. R. R. Co., 50 Fed. Rep., pp. 300, 301; and see Behlmer vs. L. & N. R. R. Co., 71 Fed. Rep., p. 839; Brewer & Hanleiter vs. Central of Georgia Railway Co., 84 Fed. Rep., p. 261; I. C. C. vs. Alabama Midland Ry. Co., 168 U. S., pp. 168, 169; Louisville, etc., R. R. Co. vs. Behlmer, 175 U. S., pp. 667, 668.

Judge Severens is right in saying that the Commission "seems to give up section 4 as of no force or effect in any case *where the conditions are not substantially similar;*" but he is mistaken in supposing that the Commission's yielding of its position was due to the Commission being "disheartened by the adverse ruling of the Supreme Court in recent cases." It will be seen that In Re Southern Ry. & S. S. Association referred to above, and which was one of the very first cases decided by the Com-

mission, the Commission speaking through Judge Cooley gave "up section 4 as of no force or effect in any case *where the conditions are not substantially similar.*"

His language in that case was that "if the circumstances and conditions of the two hauls are dissimilar, the statute is not violated."

The construction of the fourth section suggested for the first time by Judge Severens, would, if sound, require an amendment of the fourth section such as is indicated by capitals in the following paragraph:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; AND EVEN WHERE THE CIRCUMSTANCES AND CONDITIONS ARE SUBSTANTIALLY DISSIMILAR, SUCH DISSIMILARITY MUST BE IN DUE PROPORTION TO THE EXISTING DISPARITY IN RATES."

His Honor's construction is:

"That the restraint of Section IV. is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates;" and it is impossible to put that construction upon the fourth section unless, by judicial legislation, the Court adds to the language of that section some such provision as is indicated by capitals in the preceding paragraph.

In the case of the United States vs. Trans-Missouri Freight Association, this Court refused to read into the Anti-Trust Act an exception or provision which altered the natural meaning of the language used; and that too upon a material point.

166 U. S., 329.

The construction which Judge Severens proposes to put upon the fourth section is new, but it is not useful; because, if the disparity in rates between the shorter and longer distance points be such as to constitute an undue preference in favor of the latter, or an undue prejudice against the former, relief can be given under the third section of the Act. If, however, the disparity does not constitute any undue preference in favor of the longer distance points, nor any undue prejudice against the shorter distance points, it does no harm to any one; and it ought not to be prohibited, as it is proposed to do, by the judicial amendment suggested by Judge Severens.

The Commission, in its Eleventh Annual Report, commenting upon the decision of this Court in the Alabama Midland case, upon the fourth section, says:

"If the circumstances and conditions are similar, the greater charge cannot be made. IF THE CIRCUMSTANCES AND CONDITIONS ARE NOT SIMILAR, THE SECTION DOES NOT APPLY. The Court holds that railway competition of controlling force makes the circumstances dissimilar. IF, THEREFORE, WE FIND, IN A PARTICULAR CASE, THAT COMPETITION OF CONTROLLING FORCE ACTUALLY EXISTS, THAT ENDS THE MATTER. WE HAVE NO POWER TO SAY WHETHER, NOR TO WHAT EXTENT, SUCH COMPETITION JUSTIFIES THE HIGHER RATE TO THE INTERMEDIATE POINT."

"THE THIRD SECTION IS STILL LEFT, AND UNDER THAT SECTION WE MAY INQUIRE WHETHER, UNDER ALL THE CIRCUMSTANCES, THE RATES AS ADJUSTED GIVE AN UNDUE PREFERENCE TO THE COMPETITIVE POINT, but the fourth section is, by this decision, eliminated from the Act."

11 Ann. Rep., I. C. C. (1897), p. 43.

The Commission is wholly mistaken in supposing that the fourth section is eliminated from the Act by the decision of this Court in the Alabama Midland Railway case. If the circum-

stances and conditions are substantially similar, then, under the fourth section, the carrier is prohibited from charging more for a short than for a long haul, *whether the disparity in rates does or does not give an undue preference to the longer distance point.* If, however, the circumstances and conditions are substantially dissimilar, while the fourth section can have no operation, the third section remains operative, and under that section, the Court can decide whether the disparity in rates constitutes an undue preference in favor of the longer distance point, or an undue prejudice against the shorter distance point.

In the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co., the Commission again commenting upon the decision of this Court in the Alabama Midland Ry. case upon the fourth section, says:

"The section declares that the carrier shall not make the higher charge to the nearer point under 'subsantially similar circumstances and conditions.' IF THE CONDITIONS AND CIRCUMSTANCES ARE NOT SUBSTANTIALLY SIMILAR, THEN THE SECTION (i. e., THE FOURTH) DOES NOT APPLY, and the carrier is not bound to regard it in the making of its tariff. The Court has decided that railway competition, if it exists, must be considered. If, therefore, such competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate to the intermediate point, and the higher rate is not prohibited by the *fourth* section."

"WHETHER THOSE RATES ARE IN VIOLATION OF THE THIRD SECTION, IN THAT THEY GIVE AN UNDUE PREFERENCE TO THE MORE DISTANT POINT, IS A DIFFERENT QUESTION, WHICH MIGHT ARISE IN CASES OF THIS KIND."

7 I. C. Rep., pp. 479, 480, Savannah Bureau of Freight and Transportation vs. Charleston & Savannah Ry. Co., et al.

In all cases where a greater charge is made for a shorter than for a longer haul, the whole question can, according to Judge Severens, be settled under the fourth section; and the third section, under his construction, is, in such cases, of no value whatever.

But, according to the construction which the Commission puts upon the decision of this Court in the Alabama Midland Ry. case, and which construction, *in that respect*, is I think the correct one, IF THE CIRCUMSTANCES AND CONDITIONS ARE SUBSTANTIALLY DISSIMILAR THE FOURTH SECTION DOES NOT APPLY; BUT THE THIRD SECTION REMAINS, AND, UNDER THAT SECTION, IT MAY BE DETERMINED WHETHER THE DISPARITY IN RATES CONSTITUTES AN UNDUE PREFERENCE OF THE LONGER DISTANCE POINT.

Judge Severens is mistaken in supposing that the Commission is "disheartened by defeat," or that its comments upon the decision of this Court are the mere exclamations of a panic stricken fugitive. On the contrary, the Commission, with a clear conception of what this Court has decided in reference to the fourth section, has fallen back upon the third and first sections of the Act; and the opinion of the Commission in the recent case of Calloway vs. L. & N. R. R. Co., et al., 7 I. C. Rep., p. 431, unmistakably indicates that the Commission intends to use the third and first sections in the future, in all cases of a greater charge for a shorter distance, where the circumstances and conditions are substantially dissimilar; and where, for that reason, the fourth section has no application.

It may be argued by opposing counsel that Judge Severens' construction of the fourth section finds some support in the following language used by this Court in the Alabama Midland Railway Case:

"In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the mere fact of competition, no matter what its

character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration, in determining the question of 'undue or unreasonable preference or advantage,' or 'what are substantially similar circumstances and conditions.' The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases, there is no absolute rule which prevents the Commission or the Courts from taking that matter into consideration."

168 U. S., p. 167.

Surely nothing can be found in the language just quoted to sustain Judge Severens in his proposition, that *though the circumstances and conditions may be substantially dissimilar, the "restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates."*

This Court, in saying that "we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections," did not intend to intimate that either section contains any such restraint as that the rates must be "upon the scale of comparison between the dissimilarity of conditions and the disparity of rates." The only restraint contained in the fourth section is that the carrier shall not charge more for a shorter than for a longer haul under substantially similar circumstances and conditions; and this Court, in saying that the mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraint of the fourth section, means that competition which is "artificial or merely conjectural," or which is not "material and substantial," or in which the public has no interest, shall not be taken

into consideration at all, as a circumstance or condition affecting the transportation. 175 U. S., 674, 675, Louisville, etc., R. R. Co. vs. Behlmer. If, however, the competition be real "material and substantial, thereby operating on the question of traffic and rate-making," and if it subserves the public interest, as well as that of the carrier, it may be taken into consideration, and in such a case, it will relieve the carrier from the restraint of the fourth section, i. e., from charging more for a shorter than for a longer haul. 175 U. S., 674, 675, Louisville, etc., R. R. Co. vs. Behlmer. But the restraint of the third section remains, and if the disparity in rates constitutes an undue preference of the longer distance points, the rates may be declared unlawful under the restraint of that section; notwithstanding they may not offend against the restraint of the fourth section at all.

Judge Severens seems to doubt the soundness of his own construction of the fourth section, and to concede that it may become necessary to fall back upon the third section. His language is:

"But the long and short haul clause is only one of the specific provisions employed for the general purpose of the Act. The third section underlies the fourth and supplies the principles on which it rests; so that if the literal construction referred to be put upon the fourth section, the case would still be exposed to the third section, which forbids undue preference to one locality or the subjection of another to any undue disadvantage."

85 Fed. Rep., p. 117.

The only error in the language just quoted consists in the proposition that "the third section underlies the fourth and supplies the principles on which it rests."

The third section does not underlie the fourth. The third section covers ground which is entirely distinct from that which is covered by the fourth section. The *third* section does not prohibit *any* preference *unless it is undue or unreasonable;*

while the *fourth* section prohibits a greater charge for the shorter than for the longer distance, if the circumstances and conditions be substantially similar, *whether such disparity of rates does or does not constitute an undue or unreasonable preference of the longer distance point.*

XXXI.

The Fourth Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co., et al., referred to above, Judge Severens uses this language:

"Conceding that some allowance should be made for the conditions at Nashville (the longer distance point), the rigor of the rule of the long and short haul clause of the fourth section, moderated to some extent, *as it was held might be done in the case of the Commission vs. the Alabama Midland Railway Company,* 168 U. S., 144, the disproportion in the present case is too gross."

85 Fed. Rep., pp. 112, 113.

The italics are mine.

I respectfully deny that it was held, or even intimated by this Court in the Alabama Midland Railway Case, that "the rigor of the rule of the long and short haul clause of the fourth section" could be "moderated to some extent," or to any extent.

The case was decided upon the ground that the long and short haul clause of the fourth section *did not apply at all;* and not upon the ground that "the rigor" of that clause had been properly or improperly "moderated." If the circumstances and conditions are substantially similar, and a greater charge is made for a shorter than for a longer distance, etc., no court has the power to "moderate" the rigor of the fourth section to the

slightest extent. If, in such a case, the charge to the shorter distance point exceed the charge to the longer distance point, even to the extent of the fraction of a cent, such charge is absolutely prohibited by the fourth section; and no power is vested in any court to moderate the rigor of the prohibition.

The carrier, upon application to the Commission, may in special cases be relieved from the operation of the fourth section; but as no application has been made to the Commission for relief in the cases at bar, it is unnecessary to discuss the question whether the Commission would, upon such an application, have the power to moderate the rigor of the fourth section; or whether it would be limited to granting or refusing full absolution. But whatever power the Commission might have under a special application for relief, it is certain that in a case where no application for relief has been made to the Commission, no Court has the right to moderate to any extent whatever the rigor of the long and short haul clause, in any case to which it applies.

XXXII.

The Fourth Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co., et al., referred to above, Judge Severens, in commenting upon the decision of this Court in the Alabama Midland case, uses this language:

"*Both the courts below had concurred in holding that the Commission was wrong in thinking the disparity of charges was too great in view of the facts,* and the Supreme Court did not find sufficient reason for reversing their decree."

85 Fed. Rep., p. 114.

The italics are mine.

I respectfully deny that either the Circuit Court, or the Court

of Appeals, decided the Alabama Midland Railway Case upon the ground that the Commission was wrong *" in thinking the disparity of charges was too great."* Neither of those courts intimated that " the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates."

That " scale of comparison " was invented for the first time by Judge Severens; and neither the Circuit Court, nor the Court of Appeals, attempted to use it in the Alabama Midland Railway Case. Both of those courts decided that case on the ground that the circumstances and conditions were substantially dissimilar, and therefore *that the fourth section did not apply at all.* And neither of them attempted to discuss the question as to whether " the rigor of that section had been properly, or improperly, ' moderated ' by the Commission."

See the Opinion of the Circuit Court in the Alabama Midland Ry. Case, 69 Fed. Rep., 227 to 233; and the opinion of the Circuit Court of Appeals in 74 Fed. Rep., 715 to 733.

XXXIII.

The Fourth Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. referred to above, Judge Severens said:

" The Supreme Court in that case, (i. e., the Alabama Midland Ry. case) while reaffirming the doctrine that competition between railway carriers might, and frequently ought to be, considered in adjusting rates under the long and short haul clause, yet took pains to prevent the inference from its opinion that it (competition) should be regarded as a *controlling* consideration."

85 Fed. Rep., p. 114.

I respectfully deny that this Court "took pains to prevent the inference that competition should be regarded as a *controlling* consideration." On the contrary, I insist that the very point decided by this Court in the Alabama Midland Ry. case was that where competition is such that it can be properly considered, it *is* to be allowed to *control* in the making of rates.

I will hereinafter show that the competition at the longer distance points involved in these cases is "such as, having due regard for the interests of the public and of the carrier, ought justly to have effect upon the rates;" and therefore that it can be properly considered. And I will hereinafter show that if the competition be such as can be properly considered at all, it must, of necessity, be allowed to *control* in fixing rates at competitive points.

There can be no middle course. The courts must hold either that competition *can* be considered, or that it *cannot* be considered, in fixing competitive rates.

If they hold that it cannot be considered in fixing competitive rates, then the short rail lines, and the water lines will have a monopoly of the transportation business of the country. If, on the other hand, the courts adhere to the doctrine decided by this Court in the Alabama Midland Ry. case, and in the Behlmer case, that competition, such as affects rates, and such as subserves the interest of the public as well as of the carrier, may be considered in fixing competitive rates, then such competition must, of necessity, *control* in the fixing of those rates. All competing lines, however numerous they may be, must accept the lowest rates offered by any one of them, or all but one of them must abandon the competitive traffic altogether.

XXXIV.

The Fourth Section Continued

In the case of I. C. C. vs. E. T. V. & G. R'y Co., referred to above, Judge Severens said:

"As the circumstances vary infinitely and constantly in the course of such business, it would seem that Congress must have intended something unusual and peculiar, out of the ordinary course, not ordinarily incident to the business, as that which would create a substantial dissimilarity; for otherwise, the vast bulk of transportation would not be subject to the rule at all."

85 Fed. Rep., p. 114.

The inference which counsel for appellant will seek to draw from the language just quoted is, that as competition between railroads which are subject to the Act to Regulate Commerce is "ordinarily incident to the business," and therefore not "unusual," or "peculiar," it cannot create a "substantial dissimilarity" within the purview of the fourth section.

If counsel's construction of his Honor's language is correct, his Honor has fallen into the very error for which the Commission was reversed in the Alabama Midland R'y case, and in the Behlmer case.

In the opinion delivered by the Commission in the Alabama Midland R'y case, it was said:

"No attempt is made to establish substantial dissimilarity of circumstances and conditions at Montgomery on the ground of rail competition further than by proof of the fact that there are a number of railway lines running to and through that city connecting with different parts of the country. This alone, it is scarcely necessary to say, is not sufficient. Re Louisville &

Nashville R. R. Co., 1 Inters. Com. Rep., 278, 1 I. C. C. Rep., p. 31."

4 Inters. Com. Rep., p. 355, left col. Board of Trade vs. Alabama Midland R. Co.

It will be noticed that the Commission in deciding the question of rail competition in the Alabama Midland R'y case, based its opinion upon its previous decision In Re Louisville & Nashville R. R. Co.

In Re Louisville & Nashville R. R. Co. (sometimes cited as Re Southern Railway & Steamship Association), 1 Inters. Com. Rep., p. 278, it was held by the Commission that where railroads are subject to the Act to Regulate Commerce, competition between them could not be considered except in *"rare and peculiar cases."*

1 Inters. Com. Rep., p. 278, right col., 5th head note, par. (c).

In the Alabama Midland Ry. case, there was no pretense that there was anything "rare," or "peculiar," or "unusual" in the competition between the various railroads which centered at Montgomery. It was conceded that all of said railroads were subject to the Act to Regulate Commerce; and the very question which this Court was asked to decide in that case was whether the competition between those rail lines at Montgomery, all of which were confessedly subject to the Act to Regulate Commerce, could properly be taken into consideration in fixing competitive rates to and from Montgomery.

While there was a question of fact in the Alabama Midland Ry. case as to whether there was any water competition at Montgomery, there was no question of law in that case as to whether water competition could be taken into consideration.

The Commission itself, in one of its earliest cases, had decided that water competition, and competition between rail carriers *not* subject to the Act to Regulate Commerce could be taken into

consideration. It had also decided that competition, even between rail carriers subject to the Act, could be taken into consideration *"in rare and peculiar cases."*

1 Inters. Com. Rep., p. 278, right col., 5th head note.
In Re Southern R'y & S. S. Association.

None of those questions, therefore, were raised in the Alabama Midland Ry. case. The question raised in that case was whether competition between rail carriers subject to the Act, could be considered, *where there was nothing "rare," "unusual," or "peculiar" in it; and where it was in no wise different from other ordinary rail competition.* This Court decided in that case, that if the competition be such as to affect rates, and such as subserves the public interest as well as the interest of competing carriers, it may be taken into consideration, notwithstanding all of the competing rail carriers are subject to the Act to Regulate Commerce, and notwithstanding there be nothing "rare," "unusual," or "peculiar" in the competition.

See also 175 U. S., Louisville, etc., R. R. Co. vs. Behlmer.

XXXV.

The Fourth Section Continued.

Counsel for appellant may refer to the fact that certain witnesses testified that at the time the Act to Regulate Commerce was passed, and prior thereto, and since, the greater charge for the shorter than the longer haul, etc., only existed in cases of competition in transportation to the longer distance point; and he may argue that, as Congress knew this fact, it did not intend that competition in transportation should be an excuse in *all* cases, but only in certain *extreme* cases.

I concede that Congress did not intend that competition in transportation should be an excuse "in *all* cases."

I also concede that Congress did not intend that competition should be an excuse in any case, except where "the interests of the public as well as of the carrier demand it."

But I contend that where "the interests of the public as well as of the carrier" *do* demand it, Congress *did* intend that competition should be an excuse.

175 U. S., 674, 675, Louisville, etc., R. R. Co. vs. Behlmer.

I deny that the cases in which competition subserves the interests of the public, as well as of the carriers, are "extreme," "unusual," "rare," or "peculiar." On the contrary, I insist that the interests of the public are usually subserved by the existence of legitimate competition; and I will hereinafter show that the competition at the longer distance points involved in this case subserves the interests of the public, as well as of the carriers.

XXXVI.

The Fourth Section Continued.

In the case of I. C. C. vs. E. T., V. & G. Ry. Co., referred to above, Judge Severens said that the argument of counsel for the carriers in that case was, in effect, that "the *extent* of the discrimination must be confided to the judgment of the railroad officials, whose ability and experience best qualify them for the task," and that "there is nothing for the Commission or the Court to do but to take notice of the fact that the conditions are dissimilar, and abandon all further inquiry."

85 Fed. Rep., p. 117.

His Honor misapprehended my argument in that case. I have never claimed that "the extent of the discrimination" must be confided to the judgment of railroad officials; nor have I ever denied the right of either the Commission, or the Court, to review the judgment of railroad officials, on any question.

My argument in that case was, as it is in these cases, that where the existence of competition at a longer distance point is such as to create a substantial dissimilarity between the circumstances and conditions which exist at that point, and those which exist at shorter distance points, neither railroad officials, nor commissions, nor courts, can determine "the extent of the discrimination" by any such "scale of comparison between the dissimilarity of conditions and the disparity of rates" as was suggested by Judge Severens in that case.

My contention was, and is, that "the *extent* of the discrimination" *determines itself*. If the rates to the shorter distance points be reasonable within the purview of the first section; if no undue discrimination, or undue preference be brought about; and if material and substantial competition forces lower rates to some longer distance point, there is but one question submitted either to the carrier, the Commission, or the Court, and that is whether it will subserve the public interest, as well as the carrier's interest, for the carrier to compete at such longer distance point.

175 U. S., pp. 674, 675, Louisville, etc., R. R. Co. vs. Behlmer.

The decision of that question must, of necessity, be made by the carrier in the first instance. But the carrier's decision is made at his peril, and may be reviewed either by the Commission, or the Court. But if the Commission, or the Court agrees with the carrier that it will subserve the public interest, as well as the interest of the carrier, for the carrier to compete at the longer distance point, then "the extent of the discrimination" *will*

determine itself; and it will amount to exactly the difference between the reasonable rates charged to the shorter distance points, and the lower rates forced by competition to be charged at the longer distance point;—whatever that difference may happen to be.

XXXVII.

The Orders Made by the Commission in These Cases Are Not Lawful Under the Third Section of the Act.

The third section of the Act to Regulate Commerce was modeled upon the second section of the English Railway and Canal Traffic Act of 1854, and upon section 11 of the English Railway and Canal Traffic Act of 1873. For the convenience of Court, I print in parallel columns so much of said sections as are material for the present purpose:

UNDUE PREFERENCE CLAUSE.	UNDUE PREFERENCE CLAUSE.
English Act.	*American Act.*
Sec. 2. Railway and Canal Traffic Act, 1854.—1 *Nev. & Mac., p.* 2.	Sec. 3. Act to Regulate Commerce.
Sec. 11. Railway and Canal Traffic Act, 1873.—1 *Nev. & Mac., p.* 11.	That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any *undue* or *unreasonable* preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever.—24 *U. S. Stat. at Large, p.* 380.
. . . . And no such company shall make or give any *undue* or *unreasonable* preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever.—1 *Nev. & Mac, pp.* 2–11.	

In the case of Interstate Commerce Commission vs. Baltimore & Ohio Railroad Co., Mr. Justice Brown, speaking for this Court, said:

"It is not all discriminations or preferences that fall within the inhibition of the statute; *only such as are unjust or unreasonable.*" . . . "Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust."

145 U. S., pp. 276, 277, I. C. C. vs. B. & O. R. R.

In the case of Interstate Commerce Commission vs. Alabama Midland Railway Co., Judge Bruce said:

"The words 'any undue or unreasonable preference or advantage' plainly imply that every preference or advantage is not condemned, *but such, only, as are undue or unreasonable.*"

69 Fed. Rep., pp. 231, 232.

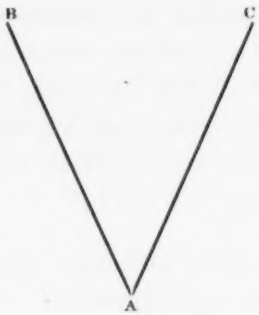
In the case of the Commercial Club of Omaha vs. Chicago & N. R. Co., decided November 18, 1897, the Commission, speaking through Commissioner Knapp, said:

"It must be remembered that not every inequality in rates constitutes a violation of the law. *Discrimination is forbidden only when it is unjust. Preferences and prejudices are not prohibited unless they are undue.* The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue."

7 I. C. Rep., p. 404.

It goes without saying that where lower rates are charged to one city than to another, and those cities are competitors in a common territory, such disparity of rates constitutes a preference in favor of the one, and a prejudice or discrimination as against the other.

But the question still remains whether the preference, or prejudice, or discrimination is *undue or unjust.*



In the above diagram, suppose A-C to represent a railroad owned by one company, and A-B to represent a railroad owned by a different company. Suppose B and C are cities which compete in the territory which lies between them. If the company owning the railroad A-C puts in a line of rates on traffic from A to C materially lower than the company owning the other railroad charges on traffic from A to B, such a disparity of rates will constitute a preference in favor of C and a prejudice or discrimination against B; because it will enable C to compete at an advantage over B in the territory which lies between them. But such preference or prejudice is not *undue* or *unjust*. Merchants at B would have no ground of complaint against the line A-C, because it carries no traffic to or from B.

4 I. C. Rep., p. 65, Eau Claire Board of Trade vs. C. M. & St. P. Ry. et al., 4th head note.

Nor would merchants at B have any complaint against the line A-B, because the reduction in rates on traffic from A to C, which alone created the disparity of rates, was not made by the line A-B, but by the line A-C, over which the line A-B has no control. Even if the same company owned both lines, the mere fact that it made a material reduction in the rates on traffic from A to C would not of itself establish the fact that the preference in favor of C was *undue*, or that the prejudice or discrimination against B was *unjust*. The competition existing at C might

compel the company to accept on traffic from A to C, rates much lower than it otherwise might reasonably charge.

XXXVIII.

The Third Section Continued.

The third section provides "that it shall be unlawful for *any common carrier* subject to the provisions of this Act *to make or give* any undue or unreasonable preference or advantage," etc.

Even though a preference be undue, or unreasonable, unless it be one which *the common carrier has "made or given," such* carrier is not responsible for it.

Such preference as may exist in these cases in favor of the longer distance points has been "made" *by competition;* and therefore it is not one which has been "made or given" *by the carriers.*

XXXIX.

The Third Section Continued.

In the Case of Texas & Pacific Ry. vs. I. C. C., 162 U. S., p. 232, this Court quotes approvingly the following statement made by Jackson, Circuit Judge, in the case of I. C. C. vs. B. & O. R. R. Co., 43 Fed. Rep., p. 53:

"The English cases establish the rule that, *in passing upon the question of undue or unreasonable preference or disadvantage*, it is not only legitimate, but proper, to take into consideration, besides the mere differences in charges, various elements, such as the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the relative cost of the services and profit to the Company, and

the situation and circumstances of the respective customers with reference to each other as *competitive* or otherwise."

162 U. S., p. 232, Tex. & Pac. Ry. vs. I. C. C.

In the same case, this Court in discussing the third section, says:

"In passing upon questions arising under the Act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, *and in considering whether any particular locality is subjected to an undue preference or disadvantage,* the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment. That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, *competition that affects rates should be considered,* and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not *undue and unjust,* the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered," etc.

162 U. S., pp. 233, 234, Tex. & Pac. Ry. vs. I. C. C.

175 U. S., pp. 665, Louisville, etc., R. R. Co. vs. Behlmer.

In the case of Tex. & Pac. Ry. vs. I. C. C., the "competitive" routes were either all water lines from Liverpool, via Cape Horn, to San Francisco; or water and rail lines from Liverpool, via the Isthmus of Panama, to San Francisco; or water and rail

lines from Liverpool to various Atlantic and Gulf ports in the United States, and thence to San Francisco. One of the questions argued in that case was, whether either of said "competitive routes" was "subject to the Act to Regulate Commerce;" and the Commission declined to recognize that case as deciding that competition between carriers which are "subject to the Act to Regulate Commerce" can be considered in determining whether a certain preference or advantage is undue or unjust. That question was definitely settled by this Court in the subsequent cases of the Interstate Commerce Commission vs. Alabama Midland Ry. Co., 168 U. S., pp. 164, 167; and Louisville, etc., R. R. Co. vs. Behlmer, 175 U. S., pp. 666, 667, 668.

In the case of I. C. C. vs. C. N. O. & T. P. Ry. Co. (known as the Social Circle Case), Newman, J., said:

"*As to the question of undue preference, under section 3* of the Act to Regulate Commerce, it may be stated that, unless the traffic involved here is obnoxious to the fourth clause of the Act, it can hardly be said to be an *undue* preference in favor of Augusta (the longer distance point), or an *undue* prejudice or disadvantage against Social Circle (the shorter distance point). In the Party Rate Case (Interstate Commerce Commission vs. Baltimore & Ohio R. R. Co., 145 U. S., 263, 12 Sup. Ct. Rep., 844), the Supreme Court says:

'But, so far as relates to the question of 'undue preference' it may be presumed that Congress, in adopting the language of the English Act, had in mind the constructions given to these words by the English Courts, and intended to incorporate them into the statute. . . . In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike, under the same conditions and circumstances, and that any fact which produces an inequality of condition, and a change of circumstances, justifies an inequality of charge.'

"So that unless the rates complained of, as compared with each other, violate the fourth section of the Act, there seems to be very little ground for claiming that they violate the 'undue preference' provisions of the third section."

56 Fed. Rep., 947, 948.

XL.

The Third Section Continued.

Counsel for appellant may refer to the following language used by this Court in the Alabama Midland Railway case, viz.:

"In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the *mere* fact of competition, *no matter what its character or extent*, necessarily relieves the carrier from the restraints of the third and fourth sections," etc.

168 U. S., 167.

I do not contend "that the *mere* fact of competition no matter what its character or extent" "relieves the carrier from the restraints of the third and fourth sections." My only contention is, that "competition *that materially and substantially affects rates* should be considered." And that proposition has been distinctly decided by this Court in the case of the Texas & Pacific Ry. vs. I. C. C., 162 U. S., 233; in the case of I. C. C. vs. Alabama Midland Ry. Co., 168 U. S., p. 166; and in the case of Louisville, etc., R. R. Co. vs. Behlmer, 175 U. S., pp. 674, 675.

Counsel for appellant may also refer to the following language used by this Court in the Alabama Midland Railway case, viz.:

"The competition may in some cases be such as, *having due regard to the interests of the public and of the carrier*, ought

justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration."

168 U. S., p. 167.

I contend that the competition at Atlanta and Opelika, (the longer distance points involved in these cases), "ought justly to have effect upon the rates," if we are to have due "regard to the interests of the public."

As said by this Court in 168 U. S., pp. 165-166; in 162 U. S., pp. 233-234; and in 175 U. S., p. 665, "the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment."

The "places of shipment" include Cincinnati and other Ohio River points; and Boston, New York, Philadelphia, Baltimore, and other eastern cities. The communities occupying the localities where the goods are delivered, include the communities at Atlanta and Opelika, as well as the communities at the shorter distance points.

The welfare of Cincinnati and other Ohio River points, and of New York and other eastern cities, and the welfare of Atlanta and Opelika are to be considered, as well as the welfare of the shorter distance points. Cincinnati and other Ohio River points, and New York and other eastern cities are entitled to the advantage which accrues to them from the competition afforded by the various competing lines which extend from those cities to Atlanta and Opelika, respectively. And Atlanta and Opelika are as much entitled to the advantage of the fact that they can avail themselves of the competition which exists between those various competing lines, as the shorter distance points are entitled to avail themselves of the advantage of the

fact that they are somewhat nearer than Atlanta and Opelika to the places of shipment.

Phipps vs. L. & N. W. Ry. Co., Law Rep. (1892), 2 Q. B., 329, et seq.

The Phipps case was cited approvingly by this Court in 162 U. S., 224, T. & P. Ry. vs. I. C. C.; and 168 U. S., p. 164, I. C. C. vs. Alabama Midland Ry. Co., et al.

I also contend that the competition at Atlanta and Opelika "ought justly to have effect upon the rates," if we are to have due "regard to the interests" of the appellee carriers.

The rates from the points of shipment to Atlanta and Opelika yield the carriers a small margin of profit over the additional cost of the movement of that traffic, and it is to the fair interests of the appellees to be allowed to earn that margin of profit, however small it may be. It is by making small "margins of profits," on large volumes of low-rate traffic, shipped between competitive points, that much of the revenue of railroad companies in this country is earned.

So long as there is any "margin of profit" at all, the appellees sustain no loss in the carriage of traffic to Atlanta and Opelika; and therefore they are under no temptation to increase the rates to the shorter distance points to recoup against loss. In other words, to paraphrase the language of this Court, "having due regard to the interests of the public, as well as of the appellee carriers, the competition at Atlanta and Opelika ought justly to have effect upon the rates;" and the Commission ought, in this case, to have allowed the appellee carriers to take that competition into consideration, notwithstanding it was competition between carriers *confessedly amenable to the Act to Regulate Commerce.*

XLI.

The Third Section Continued.

In the case of the Texas & Pacific Railway vs. Interstate Commerce Commission, 162 U. S., 219, 220, this Court says:

"The mere circumstance that there is, in a given case, a preference or an advantage, does not of itself show that such preference or advantage is *undue* or *unreasonable* within the meaning of the Act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable."

In the same case, on page 239, the Court says:

"*The mere fact that the disparity between the through and the local rates was considerable did not, of itself, warrant the Court in finding that such disparity constituted an undue discrimination*—much less did it justify the Court in finding that the entire difference between the two rates was undue or unreasonable, especially as there was no person, firm or corporation complaining that he or they had been aggrieved by such disparity."

In the case of the Savannah Bureau of Freight & Transportation vs. the Charleston & Savannah Ry. Co., 7 I. C. Rep. p. 480, the Commission having decided that certain shorter distance rates involved in that case were not a violation of the fourth section, says:

"Whether those rates are in violation of the third section, in that they give an undue preference to the more distant point, is

a different question which might arise in cases of this kind. It is incidentally raised by the allegations in this complaint, but was not relied upon on the trial. There is nothing in the case which bears upon it *except the mere fact that the rate to the intermediate point is higher.*"

I have shown in Section XXVIII. of this argument, that in the cases at bar, the Commission based the orders in controversy mainly upon the fourth section, and that all other questions that might have been raised and decided were treated by the Commission as merely subsidiary; and in that respect the cases at bar are analogous to the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co., just referred to; because in the cases at bar, as in that case, there is nothing which bears upon the question of undue preference *"except the mere fact that the rate to the intermediate point is higher."*

Under the authority of the case of the Texas & Pacific Railway vs. I. C. C., as well as under the authority of the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co., cited above, I contend that there is no sufficient evidence in the records in these cases to justify this Court in declaring that the mere disparity in rates between the shorter distance points and longer distance points, constitutes an undue preference in favor of the latter, or an undue prejudice against the former.

In the cases at bar, this Court is asked by counsel for the appellant to do precisely what the Commission refused to do in the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Railway Co., viz.: to declare that the appellees have given undue preference to the longer distance points, when there is nothing in the cases which bears upon that question, except the mere fact that the rates to the shorter dis-

tance points are higher. This Court is asked to do the very thing for which it reversed the Court of Appeals in the case of Texas & Pacific Railway vs. Interstate Commerce Commission, namely, to declare that the mere fact that the disparity between the through and the local rates is considerable, warrants the Court in finding that such disparity constitutes "an undue discrimination." It is certain that this Court has no more material evidence before it in these cases, than the Commission had before it in the case of the Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Railway Co., or the Court of Appeals had before it in the case of the Texas & Pacific Railway Co. vs. I. C. C., upon which to predicate a decree that the rates in controversy are violative of the third section.

XLII.

The Third Section Continued.

In the Case of I. C. C. vs. E. T., V. & G. Ry. Co., et al., Judge Severens said:

"In other words, my opinion is that the restraint of *section 4* is to be applied upon *the scale of comparison between the dissimilarity of conditions and the disparity of rates,* and that it is competent under *that* section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

85 Fed. Rep., 118.

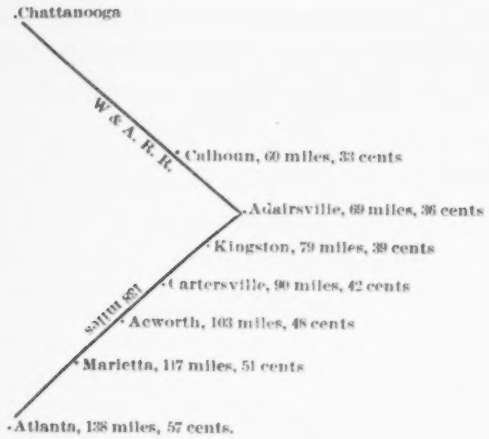
It is one thing to state a theoretical proposition and quite another thing to formulate a practical rule.

In the enforcement of the Act to Regulate Commerce, the courts will necessarily be compelled to formulate certain rules for rate-making, to be followed by the railroad traffic managers

of the country. The subject of rate-making is an eminently practical subject; and such rules as the courts may formulate must be such as can be practically applied to the commerce of the country, or they will be useless, if not injurious. With the utmost respect for Judge Severens, I submit that there is no theoretical mathematician who can understand what Judge Severens means by the phrase, "the scale of comparison between the dissimilarity of conditions and the disparity of rates;" and I also submit that there is no practical railroad traffic manager, who can make out a tariff, or schedule of rates, upon any such "scale of comparison," as Judge Severens suggests.

In the Report and Opinion, in these cases, will be found a "statement showing class rates from Chattanooga to local stations on the Western & Atlantic R. R." (Trans. No. 69, p. 23, right col.) I have shown in Section XXIII. of this argument that those local rates are from 10 to 50 per cent. less than the local rates charged by any other railroad in Georgia, except the Rome Railroad, and the Georgia Railroad. As the railroad rates in Georgia are fixed by a Commission of that State, it is fair to presume that they are reasonably low; and as the local rates of the Western & Atlantic Railroad are from 10 to 50 per cent. lower, as a general rule, than the local rates of, practically, all the other railroads in the State, it is fair to presume that they are not only reasonably low, but very low.

The local rates of the Western & Atlantic Railroad, as will be seen by reference to said Report and Opinion, (Trans. No. 69, p. 23, right col.) increase as the distance increases from Chattanooga to Atlanta; and the following diagram has been drawn to a scale showing the distance from Chattanooga to each of the stations in controversy in Case No. 69, and the rate on first class freight, in cents per one hundred pounds, from Chattanooga to each of said stations, as set forth in said statement.


Chattanooga
W. & A. R. R.
Calhoun, 60 miles, 33 cents
Adairsville, 69 miles, 36 cents
Kingston, 79 miles, 39 cents
Cartersville, 90 miles, 42 cents
Acworth, 103 miles, 48 cents
Marietta, 117 miles, 51 cents
Atlanta, 138 miles, 57 cents.

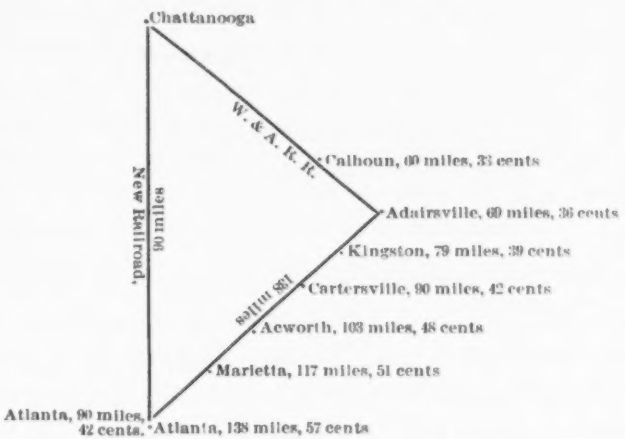
As counsel for the appellant contends that distance should be a controlling factor in the construction of rates, and as the local rates of the Western & Atlantic R. R. are constructed upon the basis of distance, it would seem that they ought to meet with his approval.

It will be seen from said diagram that the distance from Chattanooga to Atlanta, via the Western & Atlantic R. R., is 138 miles; and for that distance the Western & Atlantic R. R. is allowed to charge 57 cents per 100 pounds on first class freight.

It will also be seen that the distance from Chattanooga to Cartersville is 90 miles; and for that distance the Western & Atlantic R. R. is allowed to charge 42 cents per 100 pounds on first class freight.

For many years the Western & Atlantic R. R. was the only rail line from Chattanooga to Atlanta. And as the rates from Chattanooga to all of said local stations were constructed upon a mileage basis, and as there was no instance where a greater charge was made for a shorter than for a longer distance, on traffic originating at Chattanooga, people living along the line of the Western & Atlantic R. R. were doubtless entirely satisfied with the rate adjustment on that traffic.

Suppose a new railroad were constructed from Chattanooga to Atlanta, over a line that is only 90 miles long, as shown in the following diagram:


Chattanooga
W. & A. R. R.
Calhoun, 60 miles, 33 cents
New Railroad, 90 miles
Adairsville, 60 miles, 36 cents
Kingston, 79 miles, 39 cents
138 miles
Cartersville, 90 miles, 42 cents
Acworth, 103 miles, 48 cents
Marietta, 117 miles, 51 cents
Atlanta, 90 miles, 42 cents.
Atlanta, 138 miles, 57 cents

Suppose that the local rates of the new road were fixed by the Georgia Railroad Commission, and fixed on the same basis as that upon which the local rates of the W. &. A. R. R. are fixed.

As the distance from Chattanooga to Atlanta by the new road would be only 90 miles, the new road would be limited to a maximum rate of 42 cents per 100 pounds from Chattanooga to Atlanta. In other words, the effect of the construction of the new road would be, for all practical purposes, to reduce the rail distance from Chattanooga to Atlanta from 138 miles to 90 miles; and to entitle Atlanta, upon a distance basis, to the same rates from Chattanooga, via the new road, as Cartersville is entitled to via the W. & A. R. R.

Cartersville would have no right to complain; because, though she would be nearer than Atlanta, to Chattanooga, measured by the W. & A. R. R., Atlanta, measured by the new line, would be as near as Cartersville, to Chattanooga.

Acworth and Marietta would have no right to complain; because, measured by the new road, Atlanta would be nearer than they, to Chattanooga.

The practical question arises, how ought the traffic manager of the W. & A. R. R. to readjust his rates from Chattanooga to Acworth and Marietta? Imagine him attempting to put into practical operation Judge Severens' "scale of comparison between the dissimilarity of conditions and the disparity of rates."

The new road would not be allowed by the Georgia Railroad Commission to charge more than 42 cents per 100 pounds on first class freight from Chattanooga to Atlanta; and the traffic manager of the W. & A. R. R. would be forced to reduce the first class rate of his road from Chattanooga to Atlanta from 57 cents, to 42 cents, per 100 pounds; or he would have to abandon all of the Atlanta traffic to the new road. No one would pay the W. & A. R. R. 57 cents per 100 pounds for transporting freight from Chattanooga to Atlanta; when, for 42 cents, its transportation could be obtained over a new and shorter route, and in less time.

If the traffic manager of the W. & A. R. R. should conclude to abandon the Atlanta traffic, the result would be that both Atlanta and Chattanooga would be deprived of the competitive services of the W. & A. R. R.; and the W. & A. R. R., which had, for many years, performed all of the service between Chattanooga and Atlanta, would be prevented from performing any of it in the future. It would lose all the revenue which it had formerly realized from that traffic. The loss of revenue thus occasioned would have to be made up by increasing the rates to and from the local stations on the W. & A. R. R. between Chattanooga and Atlanta, provided that competition between product and product or between market and market would permit it, and the Georgia Railroad Commission would permit those rates to be increased. And if those rates could not be increased, the W. & A. R. R., or its stockholders and creditors, would have to sustain

the entire loss of revenue; except in so far as by reducing the number of trains, and otherwise cheapening its transportation service, the W. & A. R. R. could economize in its expenditures.

If we suppose that the traffic manager of the W. & A. R. R. ascertained that he could earn sufficient revenue, at the reduced rate from Chattanooga to Atlanta, to pay something more than the additional cost of movement of the Atlanta traffic, he would naturally determine to continue to carry freight from Chattanooga to Atlanta. It would still be necessary for his trains to run from Chattanooga in the direction of Atlanta, in order to carry freight from Chattanooga to the local stations on the W. & A. R. R.; and the additional cost of carrying, in the same trains, a few cars of freight loaded at Chattanooga, and destined to Atlanta, would be comparatively small. If he could earn anything over such additional cost of movement, while it might not be sufficient to pay anything toward dividends, or even toward fixed charges, it would still be a profit *over what it would cost to move that particular freight;* and however small it might be, it would contribute something toward the operating expenses. At all events, it would not be any burden upon the other traffic.

We will suppose, therefore, that the traffic manager of the W. & A. R. R. did conclude to continue carrying freight from Chattanooga to Atlanta; and that he was forced to accept 42 cents per 100 pounds on first class freight from Chattanooga to Atlanta. Such action would amount to a reduction of 17 cents per 100 pounds on that class of freight, from Chattanooga to Atlanta. Does Judge Severens mean that the rates from Chattanooga to Acworth and Marietta should be reduced *in the same proportion* as the rates from Chattanooga to Atlanta were reduced; or does he mean that the rates from Chattanooga to Acworth and Marietta should be reduced without regard to proportion, until they be no higher than the new rates from Chattanooga to Atlanta? If he does not mean either of these things, what does he mean? The traffic manager of the Western &

Atlantic R. R., in order to obey the decree of the Court, must have some *practical* rule upon which to reconstruct his schedule.

If it be said that the rates from Chattanooga to Acworth and Marietta should be reduced in the same proportion as the rates from Chattanooga to Atlanta are reduced, such reduction would not accord with the "scale of comparison between the dissimilarity of conditions and the disparity of rates." There would be no competitive circumstances or conditions whatever at Acworth or Marietta; while the competitive circumstances and conditions at Atlanta (caused by the construction of the new road) would be the sole cause of the reduction in rates from Chattanooga to that point.

If it be said that the rates from Chattanooga to Acworth and Marietta should be reduced, without regard to proportion, until they be no higher than the rates from Chattanooga to Atlanta by the new road, such a reduction would give to Acworth and Marietta an undue preference over Atlanta, provided distance be the controlling factor in rate construction; because, while, by the new road, the distance from Chattanooga to Atlanta would be only 90 miles, the distance from Chattanooga by the Western & Atlantic R. R. to Acworth is 103 miles, and to Marietta 117 miles.

If it be said that, though it might not be necessary to reduce the Acworth and Marietta rates in the same proportion as the Atlanta rates were reduced, and though it might not be necessary to make the Acworth and Marietta rates as low as the Atlanta rates, still there ought to be "some" reduction in the Acworth and Marietta rates, the practical question remains, *how much reduction shall be made?*

As the new road would not touch either Acworth or Marietta, its construction would not affect the circumstances and conditions existing at either of those points, and, therefore, I do not

see why either of them should be entitled to any reduction in rates, merely because there had been a change of circumstances and conditions at Atlanta. But conceding, for the sake of argument only, that Acworth and Marietta would be entitled to "*some*" reduction, the question remains as to what practical rule or principle should govern the traffic manager of the W. & A. R. R. in making up his schedule or tariff to put the reduction into effect? Again, this is but asking, in another form, what does Judge Severens mean by the phrase, the "scale of comparison between the dissimilarity of conditions and the disparity of rates?"

I repeat that there is no theoretical mathematician, or practical traffic manager, who can take the diagram referred to above, *and mark opposite each of the local stations on the W. & A. R. R. between Cartersville and Atlanta the rate that ought to be fixed from Chattanooga to that station, so that the rates will comply with Judge Severens' "scale of comparison between the dissimilarity of conditions and the disparity of rates."*

If Chattanooga were in Georgia, so that Chattanooga and Atlanta would both be subject to the jurisdiction of the Georgia Railroad Commission, Rule No. 6 of that Commission would permit the Western & Atlantic Railroad to continue to give Chattanooga and Atlanta the benefit of its competition; and would permit it to reduce its rates between those two points so as to meet the rates of the new line, "without making a corresponding reduction at all stations" along the line of its road.

Trans. No. 69, p. 37, left col.

In other words, the Georgia Railroad Commission recognizes the fact that a railroad in order to compete must accept the lowest rates offered by any of its competitors; and that it is unjust to require it to reduce all of its intermediate local rates as the condition upon which it shall be allowed to compete at the competitive point.

The Interstate Commerce Commission takes the opposite view from that taken by the Georgia Railroad Commission; and as the roads represented in said diagram are interstate roads, the Interstate Commerce Commission, prior to the Alabama Midland Railway decision, would have reduced all of the rates from Chattanooga to the local stations between Cartersville and Atlanta down to the level of the Atlanta rate. In that case there would have been no "*disparity* of rates," and consequently no use for a "scale of comparison between the dissimilarity of conditions and the disparity of rates." But since the decision in the Alabama Midland Railway case, the competition at Atlanta would be recognized as constituting a substantial "dissimilarity of conditions;" and a "disparity of rates" would exist, to the extent of the difference between the new rate from Chattanooga to Atlanta, and the old rates from Chattanooga to the respective local stations on the W. & A. R. R. between Cartersville and Atlanta; and if Judge Severens' "scale of comparison" is of any value, *it ought to enable us to determine the precise amount of reduction that ought to be made in the rate to each of those stations.*

In the diagram submitted above in this section, I have supposed that the new railroad constructed from Chattanooga to Atlanta is only 90 miles long, while the Western & Atlantic Railroad is 138 miles long.

It will be seen, however, that the principle is precisely the same, if we suppose the new railroad to be longer than the Western & Atlantic Railroad.

As a matter of fact, the E. T. V. & G. Ry. Co. has in recent years constructed a line from Chattanooga to Atlanta which is 154 miles long.

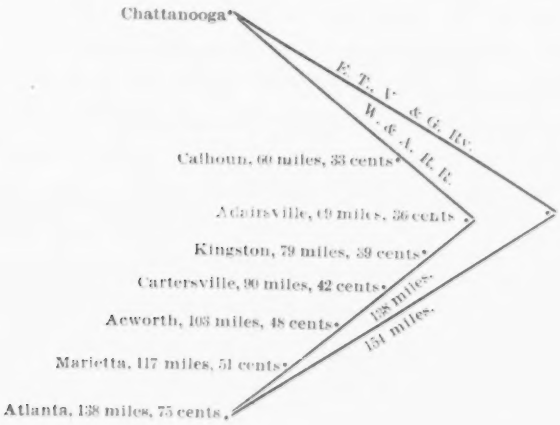
See Travelers' Official Guide, June, 1899, p. 788.

Said line is now a part of the Southern Railway System. As said E. T. V. & G. Ry. labors under the disadvantage of

being a new road, and the longest line, it is natural that it should offer some inducement to attract a portion of the competitive traffic to its own rails.

Suppose said E. T. V. & G. Ry. had seen proper to put in a rate of 42 cents, from Chattanooga to Atlanta. It is manifest that the Western & Atlantic Railroad would be compelled to meet that rate, or abandon the competitive traffic at Atlanta.

The following diagram shows the Western & Atlantic Railroad, as shown in the first diagram in this section, and also the line of the East Tennessee, Virginia & Georgia Railway, now a part of the Southern Railway system:


Chattanooga
E. T. V. & G. Ry.
W. & A. R. R.
Calhoun, 60 miles, 33 cents
Adairsville, 69 miles, 36 cents
Kingston, 79 miles, 39 cents
Cartersville, 90 miles, 42 cents
Acworth, 103 miles, 48 cents
Marietta, 117 miles, 51 cents
Atlanta, 138 miles, 75 cents
138 miles
151 miles

XLIII.

The Third Section Continued.

Counsel for the appellant contended in the court below:

That in determining the extent to which a carrier may go in protecting its own interests, we should apply the maxim of the law, "'So use your own that you do not injure the interest of another;' and that under said maxim, discrimination is only

justified to the extent that it may be practiced without inflicting material injury on any *legitimate* interest of the public, or any portion of the public."

The maxim quoted by counsel is conceded, when properly understood.

I concede that competition is no justification for a lesser charge for a longer haul, unless the competition at the longer distance points be such as subserves the public interest.

But in this case, the public consists of three classes of persons:

First: The public at Cincinnati, Boston, New York, Philadelphia and Baltimore.

Second: The public at Atlanta and Opelika.

Third: The public at the shorter distance points.

That the public at the shorter distance points is discriminated against is admitted; but my contention is that the discrimination is not unlawful, because it is not *unjust*.

The public at the shorter distance points may be injured (though not in a legal sense) in not being able to compete on equal terms with Atlanta or Opelika in common territory. But the public at Cincinnati, Boston, New York, Philadelphia and Baltimore, as well as the public at Atlanta and Opelika, are greatly benefited by the competition which exists at Atlanta and Opelika.

The Court must look to the interests *of the great majority of the public;* and if it conflicts with the interest of a small minority, the loss to the latter is, in contemplation of law, *damnum absque injuria.*

Neither an individual, nor any "portion of the public" has any "*legitimate* interest" in a question *of public policy*, which can be allowed to prevail against the interest of the majority.

A single individual, or any " portion of the public," is entitled to be protected in life, liberty, and property, against the majority, however large the majority may be. But when it comes to a mere question *of public policy*, the universal rule is, ***Salus populi suprema lex.***

The question in this case is merely one *of public policy*. The Court will place in one scale the public at Cincinnati, Boston, New York, Philadelphia, and Baltimore, together with the public at Atlanta and Opelika; while in the other scale it will place the public at the shorter distance points; and the legitimate interests of the public, as a whole, will be found in that scale which may preponderate.

Suppose the appellees should to-morrow withdraw from competition at Atlanta and Opelika. It is obvious that such withdrawal would operate to the injury of the public at Atlanta and Opelika, and also to the injury of the public at Cincinnati, Boston, New York, Philadelphia and Baltimore, who are engaged in the sale and shipment of goods to Atlanta and Opelika. But such withdrawal would not reduce the shorter distance rates in the least.

In a word, the public at the shorter distance points would not be benefited; while the public at Cincinnati, Boston, New York, Philadelphia and Baltimore, as well as the public at Atlanta, and Opelika, would be injured.

As a matter of fact, even the public at the shorter distance points is interested in preserving the competition which exists at Atlanta, and Opelika; because changes in rate conditions at Atlanta or Opelika work similar changes in rates to the shorter distance points. Thus a first-class rate of $1.54 on traffic from New York to La Grange, made by adding the $1.14 rate from New York to Atlanta, to the 40 cent local from Atlanta to La Grange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New York to Atlanta should be as low as 40 cents.

XLIV.

The Third Section Continued.

Counsel for the appellant contended, in the Court below, that according to my argument, carriers, in exercising the privilege of taking competition into consideration, may act without limit.

On the contrary, I concede that carriers, in exercising the privilege of taking into consideration competition as one of the circumstances and conditions affecting transportation, must act within "reasonable limits."

In the cases at bar I suggest that the "reasonable limits" imposed upon the exercise of said privilege are four; and all of them are eminently practical.

First: The rates charged by the appellees to the shorter distance points must not be unjust or unreasonable, within the purview of the first section of the Act.

Second: The acceptance of lower rates to Atlanta and Opelika must not create an *undue* prejudice against the shorter distance points; though in determining whether the prejudice is *undue,* regard must be had to the question whether the competition at Atlanta and Opelika is such as to create a substantial dissimilarity of condition.

Third: The competition at Atlanta and Opelika must be such as subserves the public interest. It must also be real, material and substantial; and such as to compel the acceptance by the appellees of the rates that are accepted by them at those points.

175 U. S., 674, 675, Louisville, etc., R. R. Co. vs. Behlmer.

Fourth: The rates accepted by the appellees on traffic to Atlanta and Opelika, must yield some profit (though it may be very small) *over the additional cost of the movement of that traffic.*

Within the above limits, any rates which may be accepted by the appellees upon traffic to Atlanta and Opelika are lawful.

The first limitation suggested by me concedes that the rates charged by the appellees to the shorter distance points must not be unjust or unreasonable (175 U. S., p. 674); i. e., that they must be such rates as would be regarded as perfectly fair, were it not for the fact that the appellees are charging less rates to Atlanta and Opelika.

If the rates charged by the appellees to the shorter distance points are not just and reasonable they violate the first section of the Act; they must be condemned under that section; and there is no need to invoke the operation of either of the subsequent sections.

But if the rates charged by the appellees to the shorter distance points are just and reasonable (a question which I will consider hereinafter under the first section of the Act), we have the case of complaints made on behalf of certain persons at the shorter distance points who are charged rates which are perfectly just and reasonable; and whose only real objection is that the appellees are charging less rates to Atlanta and Opelika, the longer distance points.

As said by Lord Curriehill, in Hozier vs. the Caledonian Ry. Co., their complaint "may be likened to that of the laborer, who, having worked all day, complained that others, who had worked much less, received a penny like himself."

> 1 Nev. & Mac., p. 32, Note 4; 1 Nev. & Mac., pp. 45-47, Jones vs. E. C. Ry. Co.; 2 Nev. & Mac., p. 202, Foreman, et al. vs. Great Eastern Ry. Co.; 1 Nev. & Mac., pp. 97-108, Harris vs. Cockermouth, etc., Ry.; 1 Nev. & Mac., p. 120, Ransome vs. E. C. Ry. Co.

The Hozier case was cited by this Court in 145 U. S., p. 282, and in 162 U. S., p. 222.

The Jones case was cited by this Court in 145 U. S., p. 283.

The Foreman case was cited by this Court in 162 U. S., p. 222.

And the Harris case was cited by this Court in 162 U. S., pp. 223, 224.

If the rates to the shorter distance points are just and reasonable (a question which I will hereinafter consider under the first section), the appellees ought not to be required to reduce them; even though such reductions may be necessary to place the shorter distance points upon a "rate equality" with Atlanta and Opelika, the longer distance points; because such a reduction in rates to the shorter distance points involves a serious reduction in the revenue which the appellees derive from the present rates to those points.

The second limitation suggested by me concedes that the prejudice against the shorter distance points must not be *undue;* though I contend that it is *not undue*, because the competition at Atlanta and Opelika is such as "to create a substantial dissimilarity of condition."

175 U. S., p. 674.

The third limitation suggested by me concedes that the competition at Atlanta and Opelika, the longer distance points, must be such as subserves the public interests; that it must be real and not artificial or merely conjectural; and that it must be material and substantial, i. e., such as to compel the acceptance of the rates that are charged by the appellees to those points.

175 U. S., p. 675.

The fourth limitation suggested by me concedes that the rates accepted by the appellees on traffic to Atlanta and Opelika, the longer distance points, must yield some profit (though it may be very small) *over the additional cost of the movement of that traffic.*

If the competition at Atlanta and Opelika, the longer distance points, be real, and such as to affect rates, the carriers must accept those rates or abandon the competitive traffic; but if the rates be so low as not to pay the additional cost of the movement of the competitive traffic, the carriers ought not to be allowed to compete for it. It would not be to their interest to carry the traffic at a loss; and it would not be to the interest of the public for them to do so; because no one is ever benefited in the long run by having another work for him at a loss.

But if the competition be real, and such as to affect rates, and if those rates pay something more than the additional cost of the movement of the traffic, it is to the interest of the carriers, as well as to the interest of the public, that the carriers should be allowed to compete for the traffic. Whatever profit there may be in the traffic, increases, to that extent, the revenues of the carriers; and if there be a profit (however small), there is of course, no "loss" to be reimbursed by attempting to increase the local rates. On the contrary, the local stations are benefited by allowing the carriers to participate in the competitive traffic; because whatever profit may be realized from that traffic, (however small it may be,) has a tendency to reduce the local rates and to improve the local service.

All four of the limitations suggested by me are entirely practical.

Though the question of the reasonableness of the rates to the shorter distance points involves (as is hereinafter shown) a very difficult problem; it is one which, upon proper evidence, is capable of judicial determination; and there are many cases in the Federal Jurisprudence, in which such questions have been determined by the courts.

It is also entirely practicable to determine whether the competition at Atlanta and Opelika "creates a substantial dissimi-

larity of condition;" and the determination of that question will determine whether the prejudice against the shorter distance points is, or is not, *undue*.

It is also entirely practicable to determine whether the competition at Atlanta and Opelika, the longer distance points, subserves the public interest; whether it is real or artificial; and whether it is material, and substantial, and such as to affect rates.

It is also entirely practicable to ascertain whether the rates accepted by the appellees on traffic to Atlanta and Opelika, the longer distance points, yield a profit over the additional cost of the movement of that traffic. For while it is impossible to ascertain the cost of carrying any particular ton of freight, or any particular class of freight, it is entirely practicable to closely approximate how much the expenses of a company will be increased by moving a certain traffic, over and above what they would be, if that particular traffic were declined; and such increase represents what is called *the additional cost of movement.*

I submit that the practical limitations, which I have suggested, are far preferable to the theoretical "scale of comparison between the dissimilarity of conditions and the disparity of rates" suggested by Judge Severens; and that the limitations suggested by me have been, in effect, approved by this Court in Louisville, etc., R. R. Co. vs. Behlmer, 175 U. S., pp. 674, 675.

In the cases at bar, the Court of Appeals said:

"As the non-competitive point thus gets the benefit of the lowest rate to any of the neighboring competitive points; and as the carriage of competitive traffic to the respective points is remunerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the non-competitive points are subject to any undue

or unreasonable prejudice or disadvantage by this scheme of rate-making."

93 Fed. Rep., p. 92, I. C. C. vs. W. & A. R. R. Co., et al.

XLV.

The Third Section Continued.

Counsel for the appellant contends that while some difference between the rates to the shorter distance points and the rates to Atlanta and Opelika, the longer distance points, may be justifiable, the present differences are too great. He does not suggest what the differences ought to be, other than that the rates to the shorter distance points ought not to be higher than the rates to the longer distance points.

Under the orders made by the Commission in these cases the appellees are enjoined from charging any greater compensation to the shorter distance points than to the longer distance points; but they are not enjoined from charging as great compensation to the former as to the latter. Such orders are intelligible under the *fourth* section; but they are wholly unintelligible under the *third* section.

If it constitutes undue preference in favor of the longer distance points, to charge less to them than to the shorter distance points, it constitutes unjust prejudice against the shorter distance points, to charge as much to them as to the longer distance points. If distance is to be the controlling factor in determining whether undue preference or undue prejudice exists in a given case, *all rates must be constructed upon a mileage basis;* and instead of permitting the appellees to charge as much to the shorter distance points, as to the longer distance points, the Commission should have ordered the appellees to charge less to the shorter distance points; and to so reduce their rates to the

shorter distance points as to make them the same per ton per mile as those charged to the longer distance points. In a word, the Commission (if it have any power to prescribe future rates), should have ordered the appellees *to construct their tariffs on a mileage basis.*

In the cases at bar, the Court of Appeals said:

"If the mere charging of a greater rate for the shorter than for the longer haul gives an undue and unjust preference to the longer distance points, and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul, that is charged for the longer, shall escape condemnation."

93 Fed. Rep., p. 91, I. C. C. vs. W. & A. R. R. Co., et al.

If charging the same rate for the shorter haul, that is charged for the longer haul, subjects the shorter distance points to undue prejudice or disadvantage, it is evident that the only way in which the undue prejudice or disadvantage can be removed, is to construct the rates to the shorter distance points, as well as to the longer distance points, according to mileage.

The theory of equal mileage rates is entirely correct in all cases *where competition does not interfere with it.* But in cases where competition does interfere, the theory of equal mileage rates cannot be adopted in actual practice; and though it has been proposed in every country, it has been abandoned by all.

In the report of the case of Ransome vs. E. C. Ry., on page 71 of 1 Nev. & Mac., in Note 6, there is an abstract from the report of the English Parliamentary Committee upon the amalgamation of railways in 1872, in which they declare equal mileage rates to be impracticable.

"First, because *it would prevent railway companies from lowering their rates so as to compete with traffic by sea, by canal,*

or by a shorter or otherwise cheaper railway, and would thus deprive the public of the benefit of competition, and the company of a legitimate source of profit."

Second, "it would prevent railway companies from making perfectly fair arrangements for carrying at a lower rate than usual, goods brought in large and constant quantities, *or from carrying for long distances at a lower rate than for short distances."*

The report continues: "In short, to impose equal mileage rates on the company *would be to deprive the public of the benefit of much of the competition* which now exists, or has existed; to raise the charges on the public in many cases where the companies now find it to their interest to lower them; and *to perpetuate monopolies,* in carriages, trade and manufacture, *in favor of those routes and places which are nearest* and least expensive, where the varying charges of the company now create competition. And it will be found that the supporters of equal mileage, when pressed, often really mean, *not that the rates they themselves pay are too high, but that the rates which others pay are too low."*

In March, 1885, the Senate appointed a select committee on Interstate Commerce. The committee took a mass of testimony, filling a volume of 1,450 pages; and made a report which, with its appendix, fills over 200 pages, and in its report is embodied the report of the English Parliamentary Committee, quoted above.

See Report of Senate Select Committee on Interstate Commerce, Jan., 1886, p. 57.

In the case of I. C. C. vs. Alabama Midland Ry. Co., Judge Bruce said: "In the case at bar there are questions of competing lines; and the proposition of the complainant is that, notwithstanding this, the circumstances and conditions are substantially

the same, and that it is in violation of the fourth section of the statute to charge more for the short haul to Troy, the shorter distance, than to Montgomery, the longer distance point. This argument proceeds upon the view that distance is the controlling factor on a question of rate for transportation of property; and yet *these other matters may be, and often are, more controlling than even distance itself.*"

69 Fed. Rep., p. 231, I. C. C. vs. Alabama Midland Ry. Co.

In the cases at bar, the Commission said: "To charge less per mile for greater distances is a common rule of transportation and its legality is well settled."

Trans. No. 69, p. 41, left col.

In the case of Imperial Coal Co. vs. Pittsburg & L. E. R. Co., it was held by the Commission that "in determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, *extent and nature of the competition in the business itself and by other transportation lines*, and the interest of the public in the use of the commodity and its market cost, are to be considered."

2 I. C. Rep., p. 436, Imperial Coal Co. vs. Pittsburg & L. E. R. Co. 3d head note.

In the case of Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Railway Co., decided December 31st, 1897, the Commission said: "Upon the other hand, *it often happens that distance is altogether disregarded*, and it has been held that this may be proper within certain limits and under certain conditions."

7 I. C. Rep., p. 474, Savannah Bureau of Freight & Transportation vs. Charleston & Savannah Ry. Co.

In the cases at bar, the Court is asked to hold that the mere

fact that a greater rate is charged for a shorter than for a longer distance, constitutes an undue preference of the longer distance point over the shorter distance point. The charge of undue preference *is based upon distance alone*, and it must be sustained if at all, upon the theory that distance must control in rate-making, to the disregard of all other circumstances and conditions.

XLVI.

The Third Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens says: "Now I think that no one can read these schedules fixing the rates of through traffic from the seaboard to Chattanooga (the shorter distance point in that case), and to Nashville and Memphis (the longer distance points) through Chattanooga, without being instantly and strongly impressed that there is something wrong in the principle on which such rates are adjusted, and that the *equality* which the Commerce Act was enacted to secure has been utterly disregarded."

85 Fed. Rep., p. 110.

Again he says: "If for such causes as existed here such *unequal* charges can be made along the same line of traffic, the inevitable result must be that the Commerce Act will prove of no value, and the leading principle of the common law relating to the same general subject will be overthrown."

85 Fed. Rep., p. 113.

Neither the common law nor "the Commerce Act" requires "equality" of charge, *except where the services are similar.*

In the case of I. C. C. vs. B. & O. R. R., 145 U. S., 275, Mr. Justice Brown, speaking for this Court, says: "Prior to the enactment of the Act of February 4, 1887, to regulate commerce, commonly known as the Interstate Commerce Act, 24

Stat. 379, c. 104, railway traffic in this country was regulated by the principles of the common law applicable to common carriers, which demanded little more than that they should carry for all persons who applied, in the order in which the goods were delivered at the particular station, and that their charges for transportation should be reasonable. It was even doubted whether they were bound to make the same charge to all persons for the same service; (citing cases) though the weight of authority in this country was in favor of an *equality of charge* to all persons *for similar services.*"

It has been held by this Court in the "Import Case," as well as in the "Alabama Midland Ry. Case," that the service rendered by a carrier in the transportation of traffic to a competitive point is not "similar" to the service rendered in the transportation of traffic to a non-competitive point; and therefore a person shipping to a non-competitive point is not entitled to an "equality" of charge with one shipping to a competitive point.

In ex parte Koehler, 31 Fed. Rep., p. 321, Judge Deady said: "The places between which competition in transportation exists between water craft and railways, *or even the latter,* always will and must send and receive freight at lower rates than others not so favored. This is the result of natural advantage, supplemented often by exceptional sagacity and enterprise, and it would be folly in the Legislature to prevent it if it could. As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give each one an even chance and a fair show to make the most of his or its opportunities, and leave the result to circumstances over which it has little, if any, direct control."

In the case of Brewer & Hanleiter vs. Central of Georgia Railway Co., 84 Fed. Rep., p. 268, Judge Speer said: "Shall government undertake the impossible but injurious task of making the commercial advantages of one place equal to those

of another? It might as well attempt to equalize the intellectual powers of its people. There should be no attempt to deprive a community of its natural advantages, or of those legitimate rewards which flow from large investments in business industries, and competing systems of transportation to facilitate and increase commerce. The Act to Regulate Interstate Commerce has no such purpose, and yet this appears to be the inevitable result of the decree the complainants seek in the case, without any adequate corresponding advantage either to themselves or to the community in which they live."

If the law be that all persons are entitled to an "equality" of charge, there would be no use for the first section of the Act which requires that rates be reasonable; nor for the second section of the Act which prohibits unjust discrimination; nor for the third section of the Act which prohibits undue preference; nor for the fourth section of the Act which prohibits a greater charge for a shorter distance than for a longer distance, etc. If the law be that all rates shall be equal; or that all rates shall be equal in proportion to mileage; the first four sections of the Act are wholly unnecessary.

XLVII.

The Third Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens says:

"If the fact of such competition is allowed to become a *dominating* factor in fixing the relative charges of transportation to the different places along the lines, those communities where there is no competition must be blighted by the disadvantage with which they are burdened, and the favored places grow prosperous in the sacrifice of others." . . . "With this as the

rule in adjusting rates, it seems certain that the poor places must become poorer and the localities more sparsely settled than ever. At least this would seem to be the very probable tendency."

85 Fed. Rep., p. 113.

If the fact of competition is *not* to be allowed to operate as a *dominating* factor in fixing the relative charges for transportation, then it must be prohibited or stifled altogether. Because, if competition be allowed to operate at all, it *necessarily* becomes a *dominating* factor in fixing the relative charges for transportation to the different places along the line of a railroad.

As said by Judge Deady:

" The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will, and must, send and receive freight at lower rates than others not so favored."

31 Fed. Rep., p. 321, Ex Parte Koehler.

We are therefore confronted with the question as to whether it was the intention of Congress, in passing the Act to Regulate Commerce, to prohibit or stifle competition.

The fifth section of the Act which prohibits pooling, is alone sufficient to show that Congress had no such intention. It expressly prohibits every contract, agreement or combination for pooling; and pooling was prohibited because it was supposed to have a tendency to stifle competition.

In the case of I. C. C. vs. B. & O. R. R. Co., Mr. Justice Brown, speaking for this Court, said:

" It was not the design of the Act to stifle competition."

145 U. S., p. 281, I. C. C. vs. B. & O. R. R. Co.

If it was not the design of the Act to stifle competition, and if the necessary effect of competition is to enable those places between which competition exists to send and receive freight at

lower rates than others not so favored, are the competing lines to be censured for the disadvantage under which those places labor at which no competition exists?

XLVIII.

The Third Section Continued.

Judge Severens speaks of the shorter distance points as being "*blighted* by the disadvantage with which they are burdened." Now, if it be conceded for the sake of argument that he is correct in describing them as "blighted," are the competing lines censurable for the "blighted" condition of those places?

The question is well answered by Judge Deady, as follows:

"It is not the fault or contrivance of the railway that compels this discrimination, but it is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up, or the other down, but only to maintain its business against rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the Legislature declared to be a reasonable rate, or abandon the field and let its road go to rust."

23 Fed. Rep., 533, Ex Parte Koehler.

In another case Judge Deady said:

"Freight carried to or from a competitive point, is always carried under substantially *dis*similar circumstances and conditions from that carried to or from non-competitive points. In the latter case, the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than for a short one. When each haul is made from, or to, a

non-competitive point, the effect of such discrimination is to build up one place at the expense of the other. Such action is wilfully unjust, and has no justification or excuse in the exigencies or conditions of the business of the corporation. In the former case, the circumstances are altogether different. The power of the corporation to make a rate is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or abandon the field, and let its road go to rust."

31 Fed. Rep., 319, Ex Parte Koehler.

In the cases at bar, it is not the fault or contrivance of the appellees that compels the discrimination in favor of Atlanta and Opelika; but it is the necessary result of circumstances altogether beyond their control. It is not done wantonly, for the purpose of putting those places up, or of putting the shorter distance points down; but only to maintain appellees' business against rival and competing lines of transportation. In other words, the matter, so far as appellees are concerned, resolves itself into a choice of evils. Appellees must either compete with the other railroads which run to Atlanta and Opelika, or abandon the Atlanta and Opelika traffic altogether. The power of appellees to make rates to Atlanta and Opelika is limited by the necessities of the situation. Competition controls the charge at Atlanta and Opelika. The appellees must take what they can get, or abandon the field at Atlanta and Opelika.

The rates from Atlanta and Opelika to the shorter distance points are fixed by the Georgia Railroad Commission, and cannot be exceeded; and appellees' through rates to the shorter distance points cannot exceed the competitive rates to Atlanta or Opelika, added to the rates fixed by the Georgia Railroad Commission from Atlanta or Opelika to said shorter distance points, respectively. *The result is that the through rates to said shorter distance points, are as completely controlled by the competition at Atlanta or Opelika, as are the Atlanta or Opelika rates themselves.*

XLIX.

The Third Section Continued.

Judge Severens speaks of the longer distance points as "favored places" and says that they "grow prosperous in the sacrifice of others." In what sense are Atlanta and Opelika, the longer distance points "favored?" Are they "favored" in any other sense than that the rival lines centering at those points compete with each other, as the Interstate Commerce Act allows them to do? If those lines should enter into any contract, agreement, or combination to pool their freights at such points, and in that way (as is supposed) to stifle competition, they would commit an offense against the fifth section of that Act. If they should enter into any "trust" arrangement to control the rates at such points, they would render themselves amenable to the Anti-Trust Law.

166 U. S., p. 290, U. S. vs. Frt. Assn.

The appellees are therefore placed in this dilemma. If they enter into any contract, agreement or combination to stifle competition at the longer distance points, they violate one, and perhaps two acts of Congress. If they compete with each other, in good faith, at those points, inasmuch as the necessary result of such competition (as said by Judge Deady) is to reduce the rates at those points, then, according to Judge Severens, they are guilty of "favoring" those points; which is but another way of saying that they give to those points an *undue* and *unjust* preference. It would seem, therefore, "that they are to be damned if they do, and to be damned if they don't."

If it be said that Atlanta is "favored" over the shorter distance points on the W. & A. R. R., and the Georgia R. R., in the sense that Atlanta is geographically so located as to have become the point of intersection of numerous rival lines of railway, and the strategetical rate-making center of the southeastern section of

the United States, the fact is admitted; but it furnishes no just ground of complaint either against Atlanta, or against the railway lines which center there.

As said by Judge Deady, "It is not the fault of the railways that the shipper, who does business at a competing point, has the advantage of it."

23 Fed. Rep., 533, Ex Parte Koehler.

Neither is it the fault of Atlanta or of the merchants who are located there that they have the benefit of the competition which exists there. As said by the English Court of Appeals: "I cannot see, looking at the matter as between the two traders, why the advantageous position of the one trader in having his works so placed that he has two competing routes, is not as much a circumstance to be taken into consideration as the geographical position of the other trader, who, though he has not the advantage of competition, is situated at a point on the line geographically nearer the market."

"Why the logical situation, in regard to its proximity to the market, is to be the only consideration to be taken into account, in dealing with the question, as a matter of what is reasonable and right as between the two traders, I cannot understand. Of course, if you are to exclude this from consideration altogether, *the result must inevitably be to deprive the trader who has the two competing routes of a certain amount of advantage which he derives from that favorable position of his works.*"

Law Rep. (1892), 2 Q. B., p. 242, Executors of Phipps vs. L. & N. W. Ry. Co.

When Judge Severens speaks of the shorter distance points being "blighted by the disadvantage with which they are burdened," it becomes important to ascertain by what disadvantage they are burdened; and by whom that burden is imposed. Are those places burdened by any disadvantage except that no com-

peting lines of transportation center there? And is that a disadvantage occasioned by the action of the appellees, or is it a disadvantage which arises solely from the geographical location of those places?

When Judge Severens speaks of the longer distance points growing "prosperous in the sacrifice of others," in what sense does he use the word "sacrifice?" Can any one show, or will any one undertake to assert, that prior to the promulgation of the rates which competition has forced the carriers to accept upon Atlanta traffic, the local stations on the W. & A. R. R., or on the Georgia R. R., enjoyed lower rates than they now enjoy? On the contrary, is it not a notorious fact that the rates to those local stations were very much higher then than they are now; and is it not manifest that at all those stations where the rates base upon Atlanta, every reduction which competition has heretofore forced in the Atlanta rates has inured to the full extent of such reduction to the benefit of those local stations? And if that be true, how can it be said that Atlanta has grown prosperous "in the sacrifice of those stations?" On the contrary, those stations have been benefited by every reduction in Atlanta rates; and Atlanta, instead of becoming prosperous *"in the sacrifice" of those stations,* has shared her prosperity with them.

L.

The Third Section Continued.

Judge Severens, speaking of the rule of charging more for a shorter than a longer distance, where competition compels the lower charge to the longer distance point, says:

"With this as the rule in adjusting rates, it seems certain that the poor places must become poorer and the localities more sparsely settled than ever."

It is true that the density of population and of traffic is much

greater in the States north of the Ohio and east of the Mississippi Rivers than it is in the States south of the Ohio; but the fact may be accounted for in many ways other than by ascribing it to the difference which it is claimed exists in the method of rate-making in the two territories. The prejudice against slavery which was entertained by all Europe prevented European immigration to the South, and induced it to the North. Among the immigrants there were numerous skilled mechanics and miners, who developed the mining and manufacturing industries of the North; while the South remained, until after the war, an exclusively agricultural country. Since the war, the industries of the South have become more diversified; and the local non-competitive stations in the South have prospered since the war as much as, if not more than similar non-competitive stations in the North.

In 1872, the Legislature of Ohio enacted a law, which prohibits absolutely the charging of more for a short than for a long haul, regardless of the circumstances or conditions under which traffic is carried.

The census shows that sixty local non-competitive stations in Ohio (having a population, each, of 1,000 or more) increased in population between 1880 and 1890. Those stations are as follows:

Ada, Antwerp, Avondale, Barnesville, Blanchester, Cardington, Carrollton, Cedarville, Chagrin Falls, Chardon, Cleves, DeGraff, Delta, Dennison, Doylestown, Dresden, East Liverpool, East Palestine, Eaton, Elmore, Franklin, Garrettsville, Georgetown, Glendale, Granville, Harrison, Hicksville, Jamestown, Jefferson, Linwood, Logan, Louisville, McConnellsville, Manchester, Minster, Montpelier, Navarre, Nelsonville, New Bremen, New Straitsville, North Amherst, Oberlin, Oxford, Paulding, Piketon, Plain City, Port Clinton, Richwood, St. Bernard, St. Mary, Salem, Salineville, Stryker, Tippecanoe, Wadsworth, Wapakoneta, Wellsville, Westerville, Westwood, and Wyoming.

The total population of those local stations was:

In 1890	125,318
In 1880	92,481
Increase	32,837
Percentage of increase	35 per cent.

The census shows that the following named sixty local non-competitive stations in the South (having a population, each, of 1,000 or more) increased in population between 1880 and 1890, viz.:

Auburn, Ala.; Barboursville, Ky.; Bolivar, Tenn.; Camden, S. C.; Campbellsville, Ky.; Chapel Hill, N. C.; Clinton, Tenn.; Covington, Tenn.; Cullman, Ala.; Cuthbert, Ga.; Darlington, S. C.; Dyersburg, Tenn.; Eatonton, Ga.; Elkton, Ky.; Evergreen, Ala.; Fayetteville, Tenn.; Florence, S. C.; Franklin, Ky.; Franklin, Tenn.; Fort Gaines, Ga.; Glasgow, Ky.; Graniteville, S. C.; Greenville, N. C.; Greenville, Ala.; Lebanon, Ky.; Laurinburg, N. C.; Madisonville, Ky.; Marion, S. C.; Marshallville, Ga.; Maryville, Tenn.; Morganton, N. C.; Monroe, N. C.; Oxford, N. C.; Phœnix, Ala.; Piedmont, S. C.; Pulaski, Tenn.; Randleman, N. C.; Reidsville, N. C.; Rogersville, Tenn.; Salisbury, N. C.; Somerset, Ky.; Sparta, Ga.; Statesville, N. C.; Summerville, S. C.; Sumter, S. C.; Talbotton, Ga.; Tallapoosa, Ga.; Tallassee, Ala.; Thomasville, Ga.; Toccoa, Ga.; Tullahoma, Tenn.; Union Springs, Ala.; Walterboro, S. C.; Washington, Ga.; Washington, N. C.; Waynesboro, Ga.; West End, Ga.; Winchester, Tenn.; Winnsboro, S. C.; Yazoo, Miss.

The total population of those local stations was:

In 1890	124,574
In 1880	77,664
Increase	46,910
Percentage of increase	60.4 per cent.

In other words, it will be seen that taking sixty local non-competitive stations in Ohio, in which State there has been in force since 1872 a long and short haul law, which takes no account of the circumstances and conditions under which traffic is carried, and comparing them with sixty local non-competitive stations in the South, where the Southern system of rate-making has obtained since 1872, the increase in population of said local non-competitive stations in Ohio was only 35 per cent., as against 60 per cent. increase in the population of said sixty Southern local non-competitive stations.

It is to the pecuniary interest of every railroad to develop the traffic of its local stations; and, by that process of development, such stations gradually increase in population, manufactures, etc., until they become so large as to invite the construction of other railroads; and in time they develop into competing points. The process, however, is gradual, and necessarily slow; but it is a *natural* process of evolution. The Commission, however, is not content to await the operation of natural causes; and it proposes, by an artificial process, to place non-competitive stations upon an arbitrary equality with competitive stations. It is contended that such arbitrary process of leveling the railroad rates of the country is not only authorized, but required, by the Act to Regulate Commerce. On the contrary, Judge Deady said:

"Congress never intended to make of this act a Procrustean bed, in which the conduct of the business of all the roads engaged in interstate commerce shall be made to conform to one arbitrary rule, without reference to the probable and even unavoidable difference in the conditions and circumstances under which it must be transacted."

31 Fed. Rep., pp. 320, 321, Ex Parte Koehler.

LI.

The Third Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens says:

"And although I must express an opinion upon a mere question of policy for the carriers with much diffidence, I am very strongly inclined to the belief that their (the carriers') interests would in the long run be better promoted by adhering more closely to the rules of the statute than was done in the present case, or is likely to be done under the practice which their counsel endeavors to justify."

85 Fed. Rep., p. 113.

The practice to which Judge Severens refers is that of charging more for a shorter than for a longer haul where competition compels the acceptance of lower rates at the longer distance point. His Honor's idea is that if the shorter distance points were not charged more than the longer distance points, the traffic of the shorter distance points would be increased, and, in that way, the carrier's revenue would be increased.

His Honor's opinion upon any question of *law* is entitled to the highest respect; for he is one of the most eminent jurists of the country. His opinion, however, as to the probable effect of any particular mode of rate-making is, of course, the opinion of one who has not had a very extended experience in traffic matters. But whatever weight may be given to his opinion upon the subject, his suggestion involves an experiment the entire expense of which would have to be borne by the carriers.

A similar suggestion was pressed upon Mr. Justice Brewer in the case of Chicago & N. W. Ry. Co. vs. Dey, and in reply thereto he said:

"Again it is said that it cannot be determined in advance what the effect of the reductions will be. Oftentimes it increases business, and who can say that it will not in the present case so increase the volume of business as to make it remunerative, even more so than at present? *But speculations as to the future are not guides for judicial action.* Courts determine rights upon existing facts. Of course there is always a possibility of the future; good crops may increase transportation business, poor crops reduce; high or low rates may likewise affect; but the only fair judicial test is to apply the rates to the business that has been done in the past, and see whether upon that basis such rates will be remunerative, or compel the transaction of business at a loss."

35 Fed. Rep., p. 881, Chicago & N. W. Ry. Co. vs. Dey.

If the Government of the United States desires to conduct experiments in railroad rate-making, as it has a perfect right to do, it should either defray the expense of such experiments, or guarantee the companies against loss resulting therefrom. If the Government should see proper to exercise its right of eminent domain by appropriating the interstate railroad property of this country to its own use, I have every reason to believe that the owners of railroad property would be more than willing to surrender the railroads to the Government, at anything like a fair valuation. But so long as the Government insists upon the railroads being operated by their owners, the owners ought not to be forced to undertake costly experiments in rate-making which, in the opinion of experienced traffic managers, would result in disastrous failure.

It is fair to assume that the traffic managers of the Southern railroads, who are men of long and varied experience, and some of them of world-wide reputation, are competent judges as to what line of conduct would most tend to increase the revenues of their companies; and the financial condition of Southern railways is such as to justify us in assuming that their traffic

managers have every motive to increase their revenues. The testimony of a number of the most prominent traffic managers in the South was taken in these cases, in the Circuit Court, upon the point as to whether a reduction in the rates to the shorter distance points so as to make them not higher than the rates to the longer distance points, would, or would not, tend to increase the revenues of the defendants. In every instance their opinion was in the negative; and they gave their reasons for the opinions that they expressed.

See depositions as follows:

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
van den Berg.	pp. 110, 111	61, 62	77, 78
Culp	pp. 123, 124	81, 82	66
Brown	pp. 139, 140	123	108
Lutz.	pp. 157, 158	129, 130	114, 115
Winburn.	pp. 167, 168	138, 139	. . . . .
Knox	pp. 174	146, 147	123, 124
Biles	pp. 187, 188	158	141, 142
Compton.	pp.	92, 93	94
Davant.	pp.	74	. . . . .

Counsel for appellant in argument, in the court below, quoted from an opinion of Hon. Aldace F. Walker, formerly a member of the Commission, in which Mr. Walker expressed the same view as Judge Severens. But it is proper to say that neither Mr. Walker, nor Judge Severens, have ever had any experience in the operation of railroads in Southern territory. A line of conduct which might be eminently wise in Trunk Line territory, where population and traffic are very dense, might be eminently unwise in Southern territory, where the population is sparse; and the volume of traffic, which is light, is scattered at long intervals, through large sections of country, some of which are incapable of supporting even the few people who inhabit them.

Sometimes a reduction in rates will increase the consumption of certain articles, and in that way increase the traffic, and consequently, the revenue of the railways carrying the traffic. But it is by no means true in all cases. In fact, it is true in no case, except where the rate charged for transportation represents so large a proportion of the market value of the article transported, *that it is practicable for the merchant, who sells the article, to give the consumer the benefit of the reduction.* To illustrate my meaning:

By reference to the Report and Opinion of the Commission in case No. 69, it will be noticed that the largest reduction that would have to be made in order to bring the local rates of the Western & Atlantic Railroad down to the level of Atlanta rates is 20 cents per hundred pounds on first-class goods, from Cincinnati to Marietta. Trans. No. 69, p. 23, right col. Dry goods are first class. On a hat weighing six ounces, a difference of 20 cents per one hundred pounds would amount to only 75-1000 of a cent. A difference of 20 cents per hundred pounds on coffee amounts to only two mills per pound; and to a consumer purchasing ten pounds of coffee for domestic use, the difference would amount to only 2 cents.

It is manifest that while such a reduction in rates might enable the merchant to realize a slightly greater profit on his sales to consumers, it would, in most instances, be of no importance whatever, so far as the consumer is concerned. No one would wear any more hats, or drink any more coffee, because of any such reduction in rates; for, even if the merchant were disposed to give the consumer the benefit of the reduction, the amount is too small to make the change.

Counsel referred in argument, in the court below, to what the reduction would amount to on car load quantities. But consumers seldom purchase in car load quantities, and they never purchase in car load quantities the higher classes of freight, such

as dry goods, etc., etc. As before stated, unless the reduction in rates is such as that it is practicable for the merchant to give the consumer the benefit of the reduction, (which is seldom the case as to car load quantities) consumption will not be increased, and therefore neither the volume of traffic carried by the railroad, nor the revenue derived from the traffic by the railroad, will be increased.

Counsel insisted, however, in the court below, that even though the reduction may inure to the benefit of the merchant alone, the merchant is a part of the public, and as such, is entitled to have the reduction ordered in his interest. It must be remembered, however, that the owners of railroad property are also a part of the public, and that their interests are entitled to some consideration. It seems to be a popular idea that whenever a merchant desires to increase his line of profit, all he has to do is to apply to a railroad commission, either State, or Federal, to have his profits increased, by diminishing the profits or dividends of railroad stockholders. Upon this point, in the case of Ricketts, Smith & Co. vs. Midland Ry. Co., Law Rep. (1896), 1 Q. B., p. 266, the English Railway Commission, speaking through Collins, J., said:

"I think, therefore, that the reasonableness of the rate *is not to be tried by its effect upon the trade of the persons who have to pay it.* It may be a prudent thing for a carrier to tempt traffic by charging rates much lower than he would reasonably be justified in demanding, having regard to the elements which I have referred to as primarily affecting the reasonableness of the rate; but this is a question of railway management, which, in my judgment, lies outside our province. *Within these limits he is entitled to get as much as he can, even though he thereby diverts a large part of the merchant's profit into his own pocket.*"

If the rates to the shorter distance points involved in these cases should be reduced, so as to be not higher than the rates to

Atlanta or Opelika, it would doubtless, in some instances, induce merchants at the shorter distance points to purchase their goods in Cincinnati, New York, etc., instead of purchasing them in Atlanta or Opelika, as they have heretofore done. But the volume of their purchases would be no greater than they have heretofore been. The number of their customers would not be increased; the amount consumed by their customers would not be increased; and, therefore, traffic, and the revenue of the railroads, would not be increased. While there might be a *diversion* of a certain portion of traffic from Atlanta or Opelika to the shorter distance points, there would be no substantial *increase* in the aggregate volume of traffic.

Unless reductions in rates are such as *to reach consumers and induce them to use more of the articles* upon which the reductions are made, there can be no *increase* of tonnage produced by such reductions.

LII.

The Third Section Continued.

Counsel for appellant, in the court below, quoted the following from the opinion of this Court in the Joint Traffic Association Case (171 U. S., 505):

"The result of *lower* rates is *generally* a greater demand for the articles transported, and this greater demand can only be gratified by a larger supply, the furnishing of which increases *commerce.*"

It will be noticed that this Court undertakes to state a proposition which is only *generally* true; and that it does not affirm it to be universally true. While the Court says that the result of *lower* rates is *generally* a greater demand for the articles transported, it does not say *how much* lower the rates must be made than those theretofore prevailing, in order for the reduction to increase the demand. If the rates to the shorter dis-

tance points should be made the same as the Atlanta or Opelika rates, it might increase the sale at the shorter distance points of some of the classes and commodities; and it might divert some of the traffic from Atlanta or Opelika to the shorter distance points. A mere diversion of traffic from Atlanta or Opelika to the shorter distance points would not, however, increase either the tonnage or the revenue of the appellee companies. In order for the tonnage or revenue of the appellees to be increased, the aggregate amount of merchandise consumed in the territory between Atlanta or Opelika and the shorter distance points must be increased. And the people who reside in that territory cannot be induced to increase their purchases, unless the shorter distance rates shall not only be reduced as low as the Atlanta or Opelika rates, but reduced to a point where the benefit of the reduction, instead of going into the pocket of the merchant, would reach the consumer, and induce him to increase his purchases.

LIII.

The Third Section Continued.

Judge Severens further says:

"And public policy would also be advanced by the opposite course, not only in the encouragement which would thus be given to the distribution of commerce and population, but also in extending that *equality* of privilege which it is one of the prime objects of legislation to promote."

85 Fed. Rep., p. 113.

I have shown in Section XLVI. of this argument that neither the common law nor the Act to Regulate Commerce requires "*equality* of privilege" *except where the services are similar;* and I shall have nothing further to say upon that point. But as to Judge Severens' suggestion that public policy would be advanced by building up the local stations, at the expense of the

competitive stations, I submit that it is no proper function of government to deprive the competitive stations of the natural advantages which they enjoy. When Judge Severens says that public policy would be advanced in the "encouragement which would thus be given to the distribution of commerce and population," he can mean nothing else than that the commerce and population of Atlanta, Opelika and other basing points or trade centers in the country, ought, at least to a certain extent, to be taken away from them and distributed among the small local stations on the railroads which center there. In reply, I repeat the language of Judge Deady that:

"As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give to each one an even chance and a fair show to make the most of his or its opportunities, and leave the result to circumstances over which it has little, if any, direct control."

31 Fed. Rep., 321, Ex Parte Koehler.

I also repeat the language of Judge Speer:

"There should be no attempt to deprive a community of its natural advantages, or of those legitimate rewards which flow from large investments in business industries, and competing systems of transportation to facilitate and increase commerce."

Brewer & Hanleiter vs. Central of Ga. Ry., 84 Fed. Rep., p. 268.

LIV.

The Third Section Continued.

Counsel for the appellant, in the court below, made a vigorous attack upon what he calls the "trade center" or "basing point" system of rate-making, which has been used in the Southern States for many years. Counsel quoted the following description of the system as given by Commissioner Walker:

" Certain large cities and towns situated on the coast, at interior river points, and at railroad junctions, are *called* competitive, and receive quite low rates on all interstate traffic; all other stations are *called* local, and are charged much higher rates. The rates to local points are made by adding to the competitive rates at the nearest competitive point the local rate from that point."

1 I. C. Rep., p. 631, Harwell vs. C. & W. R. R.

It will be noticed that Mr. Walker says that basing points are *"called"* competitive, as if they were so designated as a matter of preference or favor; and that he speaks of them as *"receiving"* quite low rates, as though such rates were given to them by the carriers as a matter of favoritism or partiality.

Judge Cooley was quoted by counsel in argument, in the court below, as saying that the pre-eminence of such trade centers in the Southern territory " is peculiar, and has probably been increased by the *concessions* in rates which the railroads have made to them, while making less *concessions* or none at all to less important stations." . . . " The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad managers a power of determining within certain limits, what towns shall be trade centers, and what their relative advantages."

1 I. C. Rep., p. 278, In Re Southern Ry. & Steamship Assn.

There may be a few mere " railroad junctions " which, owing to the ignorance or corruption of certain railroad officials, have been arbitrarily " called " competitive points, and which " receive " certain arbitrary " concessions " in rates. There may also be a few strictly local stations, which are not even " railroad junctions," where arbitrary and unfair " concessions " in rates have been made, by certain corrupt railroad officials, to enhance the value of property owned at such stations by said officials, or by their relatives or friends.

All such arbitrarily created so-called "trade centers," or "basing points," if any such exist, are the offspring of ignorance or corruption, and justly deserve all that the Commission has said in denunciation of them.

The error of the Commission consists in failing to distinguish between those "trade centers" or "basing points" which may have been arbitrarily created by certain railroad officials, at certain local stations, or at certain railroad junctions, and those "trade centers" or "basing points," which are situated on the sea coast, or other navigable water course, or which, though situated in the interior, have, by reason of their peculiar geographical situation, become the points of intersection of numerous rival railroads, or which, though situated at the intersection of only two rival railroads, have become competitive points by reason of certain exceptional conditions which happen to exist at those points, and which are not to be found at the ordinary local stations, or even at ordinary "railroad junctions."

Norfolk, Richmond, Wilmington, Charleston, Port Royal, Savannah, Brunswick, Augusta, Macon, Mobile, Montgomery, Columbus, Eufaula, etc., are illustrations of "trade centers," or "basing points" which are situated on the sea coast, or other navigable water course.

Competition between numerous water craft enabled them to command exceptionally low rates of transportation, long before a mile of railroad existed on the face of the earth. It is manifestly erroneous to say that they have been arbitrarily favored with exceptionally low rates by the ignorance or corruption of railroad officials. Their rates were always very much lower than those of adjacent interior towns.

When railroads were first constructed to those "trade centers," or "basing points," they found them in the enjoyment of exceptionally low rates, as compared with adjacent interior

towns; and they simply recognized the rate situation as they found it.

It was impossible for the railroad officials to have increased the rates to those "trade centers," or "basing points;" because the same water craft that had reduced the rates in the first instance would have reduced them again, if the railroad officials had attempted to increase them.

Before any railroads were built in Georgia, traffic from New York and other North Atlantic ports, as well as traffic from Cincinnati and other western points, was shipped by water via Charleston, Savannah, Brunswick or Apalachicola, to Augusta, Macon, Eufaula and Columbus.

Certain competitive through rates were charged by the ships and boats from New York and other North Atlantic ports, or from Cincinnati and other western points, to Augusta, Macon, Eufaula and Columbus, and from those "trade centers," or "basing points," the goods were hauled by wagon to interior towns in Georgia, such as Greensboro, Acworth, Hogansville and the other shorter distance points involved in these cases.

Augusta, Macon, Eufaula and Columbus were important "trade centers" in those early days, and their prominence over interior towns, such as Greensboro, Acworth, Hogansville, and the other shorter distance points involved in these cases, was far greater then than now. Greensboro, Acworth, Hogansville, and the other shorter distance points involved in these cases, were then, as now, local, non-competitive points.

The rates from New York and other North Atlantic ports, and from Cincinnati and other western points, to Greensboro, Acworth, Hogansville, and the other shorter distance points involved in these cases, were then, as now, "based" on the through competitive rates from New York and other North Atlantic ports; or from Cincinnati and other western points to

Augusta, Macon, Eufaula or Columbus; to which were added wagon rates from those "trade centers," or "basing points," to Greensboro, Acworth, Hogansville, etc.

We see, therefore, that Augusta, Macon, Eufaula, and Columbus are natural "basing points," for making rates to Greensboro, Acworth, Hogansville, etc.; because they are the nearest natural "trade centers" to those points.

Augusta, Macon, Eufaula, and Columbus are "basing points," or "trade centers," for the further reason that they are situated on navigable water courses, and in the midst of large and fertile territories which are dependent upon them for commercial facilities; and not because of railroad favoritism.

As corroborative of what I have just said in regard to "basing points," or "trade centers," in Georgia, I refer to a volume entitled "Internal Commerce of the United States (1886)," p. 333, published by the Government, which contains an exhaustive review of the commerce of the Southern States; and among other letters, it contains one from Mr. Virgil Powers, with reference to the early means of transportation in Georgia. He says: "The original transportation in Georgia was by means of ox-carts and one-horse carts for short distances, and from two to six-horse teams and wagons for longer distances, across the country.

Transportation on the navigable streams, prior to the introduction of steamboats, was by means of pole-boats and cotton-boxes. Cotton from the interior was shipped by means of boxes varying from 22 to 24 feet wide by 60 to 80 feet long, made of heavy pine timber, with square sides and ends, with the bottoms sloped up at each end. They were steered by a long, heavy oar or sweep, worked from a platform at each end, with several able-bodied men at each sweep to keep the craft from running ashore in the short bends in the crooked streams as they floated down stream to market. These boxes carried from 400 to 600 bales of

cotton each, and on reaching destination they were sold for building material or fire wood, and the men generally walked back home. The pole-boats were much like the flat-boats used now on the Mississippi River, and were covered in to carry freight under deck. They were floated down and steered as the boxes, loaded with cotton below and on deck, and returned up stream by means of long poles pushed by a number of able-bodied men. They carried from 500 to 700 bales of cotton."

"Thus heavy freight was carried into the interior until steamboats were introduced and superseded these rude means of conveyance. These boats and boxes for the transportation of cotton and merchandise were used on the Savannah, Oconee, Ocmulgee, and Chattahoochee Rivers prior to the introduction of steamboats."

Internal Commerce of United States, 1886, p. 333.

Counsel for the appellant may sneer at this citation as being "ancient history." But it certainly sustains my assertion that long before railroads were built, such places as Augusta, on the Savannah River; Macon, on the Ocmulgee River; and Eufaula and Columbus, on the Chattahoochee River; were "basing points" or "trade centers." And it effectively disproves the charge made by the Commission and its counsel that such "basing points" or "trade centers" were arbitrarily created by railroad officials.

It may be contended by counsel for the appellant that the interior towns, such as Greensboro, Acworth, Hogansville, and the other shorter distance points involved in these cases, are entitled to participate in the benefit which has resulted from the construction of railroads; and that they ought not to be remitted to the condition which existed in the days of ox-carts and wagons. I agree that the interior towns are as much entitled as those which are situated upon water courses, to participate in the benefit which has resulted from the construction of the railway sys-

tem; but I contend that they have been benefited by that system; and that they have been benefited even more, in proportion, than the cities situated upon water courses. Instead of paying the high rates formerly charged by wagons, they now have a very much better and more expeditious service by railway. The rates charged by railways are not only much less than those formerly charged by wagons, but they are regulated by the Georgia Railroad Commission, which is organized under a law which requires that the commissioners shall not, " in any way, be the holders of any railroad stocks or bonds, or be the agent or employe of any railroad company, or have any interest in any way in any railroad."

The interior towns, such as Greensboro, Acworth, Hogansville, and the other shorter distance points involved in these cases, are not content, however, with having the benefit of all the competition that exists at the " basing points," or " trade centers," with the addition of only such local railroad rates as the Georgia Railroad Commission may fix as reasonable; but they insist upon having *precisely* the same rates as if they were located *exactly* where the " basing points," or " trade centers," are located.

There are in the South a few " basing points," or " trade centers," which are not situated on the sea coast, or other navigable water course, and which have become competitive points by reason of their peculiar geographical location, which has caused them to be made points of intersection of numerous rival railroads. Atlanta and Birmingham are illustrations of this class of " basing points," or " trade centers."

It is, of course, impossible to explain why large cities should have grown up at the exact points where Atlanta and Birmingham are located, instead of at points 50 or 100 miles distant from them. It is also impossible to explain why so many railroads have been constructed to Atlanta and Birmingham, instead of being constructed to other points, which, to all appearances,

would have presented as many advantages as are offered by Atlanta or Birmingham. But the fact is, as we all know, that those two cities have become points of intersection of numerous rival railroads; and that those railroads, in their strife to share in the transportation of the large traffic of those cities, have reduced the rates to and from them, until the rates are almost as low as those which obtain to and from cities located upon navigable water courses.

It may be argued that it was wrong for so many railroads to congregate anywhere; and especially wrong to congregate at Atlanta or Birmingham; or it may be argued that having congregated at Atlanta and Birmingham the railroads ought to have kept the peace toward each other, and ought not to have indulged in those competitive rate wars which have so reduced the transportation charges at those points.

It is, in effect, contended by counsel for the appellant that the prominence which has been obtained by Atlanta and Birmingham is due alone to railroad favoritism; and that if they had been treated like they should have been, they would to-day be like other railway stations in their vicinity. But Atlanta and Birmingham were as prominent when the Act to Regulate Commerce was passed as they are now; and the question for this Court to decide is whether Congress intended by that Act to deprive such places as Atlanta and Birmingham of their positions, and reduce them to the ranks.

I submit that Congress never intended to interfere with the commercial advantages possessed by any city; whether those advantages were due to natural causes, such as location upon a water course, or to artificial causes, such as the aggregation of capital, the exhibition of business enterprise and sagacity; or even the accident of being selected as the point of intersection of numerous railways.

Congress does not require equality of rates in any case except where there is a similarity of circumstances and conditions. If the circumstances and conditions be substantially dissimilar, it is not the intention of Congress to inquire how the dissimilarity may have originally been created.

There is in commerce, as in politics, such a thing as the "status quo;" and we might as well question the right of Germany to Alsace and Lorraine, as to question, at this day, the right of such places as Atlanta and Birmingham to the commercial prominence which they now possess; and which they have possessed for many years.

Opelika is not situated upon any water course, and it is the intersection of only two railways; but it is affected by certain exceptional conditions which happen to exist at that point, and which are not to be found at ordinary local stations, or even at ordinary railroad junctions; those exceptional conditions are set forth by the Commission in its Report and Opinion, Trans. No. 69, p. 34, left and right col.; p. 55, left and right col. They have been heretofore referred to by me in Section XX. of this argument, and need not be here repeated.

In the cases at bar, the Court of Appeals said:

"The Commission's report says that the present adjustment of rates, to Atlanta is the outcome of severe competition between lines leading from the competing markets, like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. While it makes no similar finding with reference to Opelika showing whether or not the adjustment of rates to that point is the outcome of severe competition, either between carrier and carrier, or between market and market, its recitals of what the proof shows as to conditions there are to that effect, and the testimony of numerous creditable witnesses is clear and pointed to

the effect that the adjustment of rates to Opelika is the outcome of controlling competition."

93 Fed. Rep., p. 87, I. C. C. vs. W. & A. R. R. Co. et al.

Again the Court of Appeals said:

"The testimony of the witnesses and the report of the Commission show that Opelika is not situated on any water course, and is at the intersection of only two railways, but that it is affected by certain conditions which happen to exist at that point and which are not to be found at ordinary local stations or even at ordinary junctions. With its two railroads as terminal carriers, it is connected at comparatively short distances with numerous and extensive systems of rail and water carriage, which make it possible for freight to reach Opelika from the northern and eastern ports, and from Ohio river points by many different routes, the strong competition between which different carriers comes to a focus at Opelika."

93 Fed. Rep., p. 89, I. C. C. vs. W. & A. R. R. Co. et al.

LV.

The Third Section Continued.

"Basing points" or "trade centers" are not confined to the South. Freight tariffs covering the traffic from the eastern seaboard territory to western points were, for many years, established under the rules and regulations of the associations then known as the Trunk Line, and Central Traffic associations. Under agreements of several years' standing, it had been the custom of roads, forming by connections through lines from the seaboard to the West, to determine through rates from New York to Chicago, "and to adopt such rates *as the standard or basis* for the construction of tariffs from other Eastern cities, and points adjacent thereto, which are directly or indirectly in competition for Western business."

"For twenty years or more the rates from Boston to Western competitive points have been the same as from New York. From Philadelphia and Baltimore, the rates are "agreed differentials"—less than New York—the Baltimore rates being also lower than Philadelphia rates."

The agreed rates and distances from New York to Chicago are taken as the standard, or 100 per cent. Through rates to the principal Western cities, towns and junction points in the territory above described, are computed at a percentage of the New York-Chicago rates, based generally on the relative mileage of such points to the Chicago mileage. For example, rates from New York to Indianapolis, Ind., are 93 per cent. of the New York-Chicago rates; Cincinnati, O., 87 per cent.; Columbus, O., 77 per cent.; St. Louis, Mo., 116 per cent., etc., etc. Thus the New York-Chicago rates being at all times applied as the basis would, when changed, create relative changes in the rates to other Western points. In a similar manner the relation as to rates is maintained from the other Eastern cities. When the rates from New York to Western points are changed, like changes are made from Boston, Philadelphia and Baltimore, and points receiving the same rates; the "differentials" as between the Eastern cities being at all times maintained.

Wholesale Prices, Wages and Transportation, Senate Rep., No. 1394, 2d Sess. 52 Con., Part I., pp. 429, 430.

And so with reference to through rates from Kansas and Nebraska points to the seaboard. "The through rates to the Eastern seaboard are generally made on the combination of the rates east and west of the Mississippi River."

Wholesale Prices, Wages and Transportation, Senate Rep., No. 1394, 2d Sess. 52d Con., Part I., p. 552.

The rates and distances from New York to Chicago are taken as the base in the territory between those cities, because of the

water competition from Chicago to New York via the Lakes, the Erie Canal and the Hudson River; and that line of water transportation is the only practicable water line between the northeastern sea coast and the Mississippi River. But the Southern territory is surrounded on the east and south by the Atlantic Ocean and the Gulf of Mexico; and on the west and north by the Mississippi and Ohio Rivers. It is also penetrated by numerous rivers navigable by steamboats from the ocean for considerable distances into the interior.

It is therefore impossible to adopt in the South any one set of rates, or any particular distance, as a standard for making rates for that entire territory. To illustrate, if it were attempted to take the distance, and the rates, from New York to New Orleans, as a standard or basis, and to fix the rates from New York to Norfolk, or from New York to Charleston, or from New York to Savannah, etc., as certain per cents of the rates from New York to New Orleans, such percentage rates could not be maintained like similar percentage rates are maintained between interior cities in the Trunk Line territory; because they would be cut, in almost every instance, either by the all water lines, or by the rail and water lines.

That peculiar difficulties surround the rate situation in the South is conceded by the Commission, itself, in the following language:

"A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and the Potomac on the north, and by the Mississippi on the west, presented to the Commission an opportunity, and also an occasion, for such a study. *The railroad business of that section has grown to be what it is in sharp competition with water carriers, who not only have had*

the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions."

First Annual Report Interstate Commerce Commission (1887), p. 16.

The only possible way by which the basing system employed in the Trunk Line territory could be made applicable in the Southern territory, would be to subject all carriers by water to the Act to Regulate Commerce, and to establish by legislative enactment or otherwise, certain relative maximum *and minimum* rates to and from all of the principal points in the South; and then require all carriers, whether by rail, or by water, to maintain the rates so fixed.

LVI.

The Third Section Continued.

In his argument, in the court below, counsel for the appellant contended that as all of the lines reaching the longer distance points involved in these cases charge the same rates to those points, and as those rates are what are known as "agreed rates," there is no real competition at those points. Or, to state it differently, that instead of there being competition at those points, there is an agreement *not* to compete.

This position is inconsistent with another position taken by counsel, and which is discussed in Section XXXV. of this argument. In the position discussed in that section, counsel referred to the fact that certain witnesses testified that at the time the Act to Regulate Commerce was passed, and prior thereto, and since, the greater charge for the shorter than the longer haul *only existed in cases of competition at the longer distance points*, and he argued that, as Congress knew that fact, it did not intend that competition should be an excuse, except in certain *extreme* cases, etc.

In one position, he contends that competition is the sole cause for charging less for a longer than for a shorter distance; and in the other position he contends that there is no real competition at the longer distance points.

Counsel referred to certain traffic agreements between competing railroad companies which were considered by this Court in U. S. vs. Trans-Missouri Freight Association, 166 U. S., p. 290; and U. S. vs. Joint Traffic Association, 171 U. S. page 505. The agreements before the Courts in those cases were held to be violative of the Anti-Trust Act because their effect was to restrict competition.

As held by this Court in those cases, the object of the Traffic Association agreements then under consideration was to restrain within certain limits the competition which existed at the points covered by said agreements.

The very fact that such agreements were made, is the best evidence that competition did exist at the points covered by them.

If competition is not the compelling force which has caused the appellee carriers to accept lower rates at the longer distance points, why have they done so? Have they voluntarily sacrificed their revenue at those points?

The Commission concedes and reports that "the present adjustment of rates to Atlanta is the outcome of severe competition."

Trans. No. 69, p. 24, right col.

And the Court of Appeals finds and declares that "the adjustment of rates to Opelika is the outcome of controlling competition."

93 Fed. Rep., p. 87, I. C. C. vs. W. & A. R. R. Co. et al.

In the cases at bar the Court of Appeals replying to a similar argument said:

"It is true that with reference to both points, *i. e.*, Atlanta and Opelika, the longer distance points in these cases, the force of this competition has been recognized by the respective appellees, and its influence has, by agreement between them, been so adjusted as to fix the rates to each of these points; but witnesses showing thorough competency to testify to the fact, state that this adjustment of the rates has been brought about and is maintained by the force of the competition bearing upon those points. It is argued by counsel for the appellant that by this agreement as to rates, the carriers have contracted to not compete. But it is not shown or reasonably suggested on what ground or for what consideration the competing carriers consented to accept a lower rate to these longer distance points than they charge to the shorter distance points, if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points."

93 Fed. Rep., pp. 87, 88, I. C. C. vs. W. & A. R. R. et al.

The Commission itself finds and reports, that competition at Atlanta has been effective for a considerable period.

Trans. No. 69, p. 24 right col. and 25 left col.

And that the competition at Atlanta includes both the competition of markets for supplying goods to Atlanta, *and the competition of carriers* for the carriage of freight to that point from eastern and western cities.

Trans. No. 69, p. 24 left and right cols.

LVII.

The Third Section Continued.

In his argument, in the court below, counsel for the appellant contended that, inasmuch as the orders of the Commission are simply that the rates to the shorter distance points shall not be

higher than those to the longer distance points, they may be complied with by giving the shorter distance points rates as high as those to the longer distance points, and that this privilege or option given to carriers to make the rates to the shorter distance points as high as to the longer distance points, *thus ignoring the natural advantage of the former in being the shorter distance points*, is all that can be asked by the carriers, *and is a reasonable allowance for any dissimilarity of conditions resulting from the competition shown in these cases.*

If the Commission had the legislative power to prescribe rates to be charged in the future, as it at one time claimed to have, I could understand such expressions as " the Commission ignoring the natural advantages of the shorter distance points."

With an arbitrary rate-making power at its command, it could, with impunity, ignore the natural, or commercial advantages of any city in the Union, and there would be no practical relief, however capricious its action might be.

But, as the Commission has no legislative power, and must act as a quasi judicial tribunal, what right has it to " ignore the natural advantages " of the shorter distance points, if they have the legal right to enjoy those advantages?

I have shown in Section XLV. of this argument that if it constitutes unjust preference in favor of the longer distance points to charge less rates to them than to the shorter distance points, it constitutes unjust prejudice against the shorter distance points to charge as high rates to them as to the longer distance points; and that if distance is to be the controlling factor, the rates to the shorter distance points and to the longer distance points, respectively, as well as all other rates, must be constructed *on a mileage basis.*

If the shorter distance points are entitled to have their rates constructed on a mileage basis, neither the Commission nor the

Court has the right to "ignore their natural advantage," in being the shorter distance points.

But if it be held that the shorter distance points involved in these cases are entitled to have their rates constructed on a mileage basis, every other city and station has the same right; and all rates in this country must be constructed on that basis.

Neither the Commission, nor the Court, has any more power than a railroad, to subject the shorter distance points to any unjust prejudice; and if they are entitled to have rates constructed on a mileage basis, the Commission and the Court, as well as the railroads, should say so, and not "ignore their natural advantage," by subjecting them to rates as high as those to the longer distance points.

When counsel says that the privilege given the carriers to charge to the shorter distance points, rates as high as those to the longer distance points, "is a reasonable allowance for any dissimilarity of conditions resulting from the competition shown in these cases," he concedes that a dissimilarity of conditions *has* resulted from that competition; and yet he fails to explain why it would be a reasonable allowance for that dissimilarity, to permit the carriers to charge to the shorter distance points rates exactly as high as those to the longer distance points, and yet not one cent higher. It is quite easy to make such assertions, but quite impossible to suggest any intelligible reason in support of them.

In the cases at bar, the Court of Appeals in replying to a similar argument of counsel, said:

"If the mere charging of a greater rate for the shorter than for the longer haul, gives an undue and unjust preference to the longer distance points, and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how

the charging exactly the same rate for the shorter haul that is charged for the longer shall escape condemnation."

93 Fed. Rep., p. 91, I. C. C. vs. W. & A. R. R. et al.

In Section XLII. of this argument I showed that it is practically impossible to construct rates upon any "scale of comparison between the dissimilarity of conditions and the disparity of rates;" and it is equally impossible to affirm, with any basis of reason to support it, that a certain relation of rates constitutes "a reasonable allowance for dissimilarity of conditions resulting from competition."

It is easy enough to make the *assertion* that a certain relation of rates constitutes "a reasonable allowance for dissimilarity of conditions resulting from competition;" but such an assertion, if made by a quasi judicial tribunal, should be supported by some good reason.

The legislative department has the power to arbitrarily declare that any particular relation of rates shall *be deemed* to be reasonable; whether it be reasonable in fact, or not—provided it does not amount to confiscation of the carrier's property.

Congress has the power to arbitrarily declare that all interstate rates shall be made upon a mileage basis; without being able to assign any good reason for doing so.

So, Congress has the power to arbitrarily declare that under no circumstances or conditions, shall a greater charge be made for a shorter, than for a longer distance; and it may do so without being able to assign any good reason for its action.

But when a quasi judicial tribunal declares that all interstate rates shall be made upon a mileage basis; or that under no circumstances or conditions shall a greater charge be made for a shorter than for a longer distance, it must be able to assign some good reason for its decision; and that reason must show *that*

rates made otherwise than as directed by the Court, violate some provision of the Act to Regulate Commerce.

Congress has the power to arbitrarily declare that the rates to the shorter distance points in these cases shall be not higher than the rates to the longer distance points; and it may do so without being able to assign any reason for its action. But before this Court can be asked to judicially declare that the privilege given the carriers to make the rates to the shorter distance points as high as to the longer distance points " is a reasonable allowance for any dissimilarity of condition resulting from the competition shown in these cases," the Court must be furnished by counsel with some good reason to support the declaration.

Every reason that can be assigned to show that the shorter distance rates should not be higher than the longer distance rates, can be assigned to show that the shorter distance rates should be lower than the longer distance rates; and lower in the exact proportion that the shorter distance mileage is less than the longer distance mileage.

But as such a course of reasoning would lead to the requirement of mileage rates all over the country, this Court is not asked by counsel to follow the reasoning to its inevitable conclusion; but the Court is asked to follow it a part of the way, and then to arbitrarily reject it for the remainder of the way.

LVIII.

The Third Section Continued.

In his argument in the court below, counsel for the appellant referred to a statement in the opinion of this Court in the case of Union Pacific Co. vs. Goodrich, 149 U. S., p. 680, to the effect that the Act to Regulate Commerce was designed to " cut up by the roots the entire system of rebates and discriminations

in favor of particular localities, special enterprises, and favored corporations."

The word "rebates" as used by the Court manifestly refers to "*special* rebates" mentioned in section 2 of the Act to Regulate Commerce, and which are prohibited only when they are given to one person, and refused to another, where the service to both is rendered under substantially similar circumstances and conditions.

The word "discrimination" as used by the Court manifestly refers to "*unjust* discrimination" mentioned in said section; because the same Court held that the act prohibits only such discriminations or preferences "as are *unjust* and *unreasonable.*"

145 U. S., pp. 276, 277, I. C. C. vs. B. & O. R. R.

LIX.

The Orders Made by the Commission in These Cases Are Not Lawful Under the Second Section of the Act.

The second section of the Act to Regulate Commerce is:

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

24 U. S. Stat. at Large, pp. 379, 380.

The second section was construed by this Court, in Wight vs. U. S., 167 U. S., pp. 516-518. In that case, a railroad company charged one shipper a higher rate than another shipper for the carriage of beer from the same place of shipment (Cincinnati) to the same destination (Pittsburg). The Court held that the phrase "under substantially similar circumstances and conditions," *as used in the second section*, refers to the matter of carriage, and does not include competition. The Court said that it was the purpose of *the second section* to enforce equality between shippers, and to prohibit "any rebate or other device by which two shippers, shipping over the same line, *the same distance*, under the same circumstances of carriage, are compelled to pay different prices therefor."

In other words this Court construed the second section of our Act as being the equivalent of what is known as the English "Equality Clause;" which is a clause of Section 90 of the English "Railway Clauses Act, 1845."

The English "Equality Clause" requires equality of charge in no case except where goods pass *"only* over the *same portion of the line* of railway under the same circumstances."

2 Ann. Rep., I. C. C. (1888), p. 89.

The English "Equality Clause" has no application where the freight of one shipper, though carried over the same portion of the line, is carried a greater distance from a common point of departure than the freight of another shipper. In such a case, the freight carried the greater distance, would pass "over the same portion of the line" as the freight carried the lesser distance; but the freight carried the greater distance would also pass over an *additional* portion of the line; and, therefore, the two shipments would not pass *"only* over the same portion of the line."

Law Rep., 21 Q. B. (1888), pp. 217, 218, L. & Y. Ry. Co. vs. Greenwood.

It is evident that where goods pass *"only* over the same portion of the line," or " between the *same* points of departure and arrival," there cannot be any substantial dissimilarity of circumstances and conditions, *so far as competition is concerned.* Because, whatever competition may exist on that portion of the line affects all shippers equally. And if, by reason of such competition, a railroad company sees proper to accept certain rates from one shipper, it must, by the express terms of the " Equality Clause," accept the same rates from any other shipper, in respect of all goods of the same description, passing between the same points, of departure and arrival.

The English " Equality Clause " did not apply either where the points of departure were different; or where the points of arrival were different; or where the distances over which the goods were carried were different.

Law Rep., 21 Q. B. (1888), pp. 217, 218, L. & Y. Ry. Co. vs. Greenwood.

And so, this Court held that the *second section* of our Act applies only where two or more shippers ship " over the same line, *the same distance,* under the same circumstances of carriage."

In the cases at bar, goods destined to the shorter distance points do not pass over the " same distance " as goods shipped to the longer distance points.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co., which was a case involving the long and short haul clause, Judge Severens held that the case was not one " to which the second section is applicable."

85 Fed. Rep., 119.

LX.

The Orders Made by the Commission in These Cases Are Not Lawful Under the First Section of the Act.

The first section enacts that all charges "shall be reasonable and just."

24 U. S. Stat. at Large, p. 279.

Mr. Justice Brown, in delivering the opinion of this Court, in the case of I. C. C. vs. B. & O. R. R., said:

"A charge may be perfectly reasonable under section 1, and yet may create an unjust discrimination, or an unreasonable preference, under sections 2 and 3."

145 U. S., 277, I. C. C. vs. B. & O. R. R.

81 Fed. Rep., p. 804, Kinnavey vs. Terminal R. Assn.

Section 2 was passed to provide for that class of cases where a difference in rates constitutes an unjust discrimination.

Section 3 was passed to provide for that class of cases where a difference in rates constitutes an undue preference.

Section 4 was passed to provide for that class of cases where a difference in rates constitutes a greater charge for a shorter than for a longer haul, etc., under substantially similar circumstances and conditions.

Section 1 was passed to provide for that class of cases where the sole question involved is whether a given rate is reasonable and just, in and of itself, even though it does not constitute an unjust discrimination, nor an undue preference, nor a greater charge for a shorter than for a longer distance.

LXI.

The First Section Continued.

In the case of Harding vs. C., St. P., M. & O. R. Co., decided in 1887, which was one of the earliest cases decided by the Commission, the Commission held that "on a petition charging the exaction of *unreasonable* rates, *the burden of proof is on the petitioner* to sustain the charges by evidence which shows with reasonable certainty that they are in substance true."

See 1 I. C. Rep., p. 375.

In the case of Brewer & Hanleiter vs. Louisville & Nashville Railroad Company, decided in 1897, and which is one of the latest cases decided by the Commission, the Commission reiterated the doctrine that the burden of proving that a rate is in and of itself *unreasonable* is upon the complainant.

See 7 I. C. Rep., p. 234.

Counsel for the appellee contended, in the court below, that as the facts which are necessary to enable the Court to determine the reasonableness of rates are peculiarly within the knowledge of the appellants, the burden of proving those facts ought to be placed upon them.

The contention of counsel is directly antagonistic to the decision of the Commission in the two cases just cited.

Counsel ignores the fact that Section 20 of the Act to Regulate Commerce authorizes the Commission to require annual reports from all interstate railroad companies, and to require from them "specific answers to all questions upon which the Commission may need information." Counsel also ignores the fact that interstate railroad carriers make annual reports to the Commission, showing in detail many of the facts which are proper to

be considered in determining the reasonableness of rates; and if any additional facts are desired by the Commission, all that it has to do is to call for them under the twentieth section of the Act, or to take the depositions of appellants' officers.

Counsel for the appellee contended, in the court below, that the appellants recognized that the burden of proof was upon them, by taking the testimony of certain expert witnesses, to the effect, that, in their opinion, the rates to the shorter distance points are just and reasonable. The appellants, knowing that the report and opinion of the Commission would be relied upon as prima facie evidence of the facts, took their testimony in the Circuit Court in advance of any testimony that was taken by the Commission; and not knowing what testimony the Commission would take in that Court upon the question as to the reasonableness of the rates to the shorter distance points, the appellants took said expert testimony; not because they supposed that the burden of proof was upon them, under the first section, but to anticipate any proof upon the subject that the Commission might afterwards take.

The question as to what is a reasonable and just rate to be charged for the transportation of a given class of freight, for a given distance, over a given railroad, is one of great difficulty, even when considered by the most competent experts. Railroad traffic managers, and freight agents, are generally men of a high order of intelligence, who have devoted many years of their lives to the adjustment of rates; and when they have, upon mature consideration, arrived at the conclusion that a given rate is reasonable and just, it may, even upon that ground alone, be fairly presumed, especially in the absence of proof to the contrary, that such conclusion is correct.

LXII.

The First Section Continued.

In the case of Ames vs. U. P. Ry. Co., Mr. Justice Brewer used this language:

"But the grave question still remains, are the rates prescribed in this Act as the maximum over which the railroad companies may not go, unreasonable, and so unreasonable as to justify the Court in staying its operation? *No more difficult problem can be presented than this.* There are so many matters which enter into it, and which must be taken into consideration, before a satisfactory answer can be reached."

64 Fed. Rep., 173, Ames vs. U. P. Ry. Co.

In the same case, reported under the style of Smyth et al. vs. Ames (known as the "Nebraska Freight Rate Case"), this Court said: "How such compensation may be ascertained, and what are the necessary elements in such an inquiry, will always be an embarrassing question."

169 U. S., p. 546.

176 U. S., pp. 172-180, C. M. & St. P. Ry. Co. vs. Tompkins.

In the case of U. S. vs. Freight Association, 166 U. S., p. 331, Mr. Justice Peckham used this language:

"What is a proper standard by which to judge the fact of reasonable rates? Must the rates be so high as to enable the return *for the whole business* done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, *what is a fair and reasonable profit?* That depends sometimes upon *the risk incurred,* and the rate itself differs in different localities; which is the one to which reference is to be made as the standard? Or is the reasonableness of

the profit to be limited to *a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended?* Or is still another standard to be created, and the reasonableness of the charges tried by *the cost of the carriage* of the article, and a reasonable profit allowed on that? And in such case would *contribution to a sinking fund to make repairs upon the roadbed and renewal of cars,* etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by reference to the *charges for the transportation of the same kind of property made by other roads similarly situated?* If the latter, a combination among such roads as to rates would, of course, furnish no means of answering the question. It is quite apparent therefore, that *it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation.*"

The italics are mine.

166 U. S., pp. 331, 332.

See also 81 Fed. Rep., pp. 551, 552, Van Patten vs. C. M. & St. P. Ry. Co.

In the case of Smyth et al. vs. Ames et al., Mr. Justice Harlan said:

"We hold, however, that the basis of all calculations as to reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be *the fair value* of the property being used by it for the convenience of the public. And in order to ascertain that value, the *original cost of construction,* the amount expended in *permanent improvements,* the *amount and value of its bonds and stock,* the *present, as compared with the original, cost of construction,* the probable *earning capacity* of the property under particular rates prescribed by statute, and the sum required to meet *operating expenses,* are

all matters for consideration, and are given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Smyth et al. vs. Ames et al., 169 U. S., pp. 546, 547.

In the cases which have involved the question as to the *reasonableness* of rates, " labyrinths of tables, figures, and estimates," were presented in the testimony, discussed by counsel in their briefs, and considered by the Court with the closest scrutiny and greatest patience, as will be seen by reference to the opinions in:

64 Fed. Rep., pp. 179 to 194, Ames vs. U. P. Ry. Co.

78 Fed. Rep., pp. 263-275, Southern Pacific Co. vs. Board of R. R. Comrs.

154 U. S., pp. 402-413, Reagan vs. Farmers' Loan & Trust Co.

169 U. S., p. 466, Smyth et al vs. Ames et al.

176 U. S., pp. 172-180, C. M. & St. P. Ry. Co. vs. Tompkins.

In the cases at bar, there will not be found either in the testimony taken before the Commission, or in the testimony taken in the Circuit Court, any sufficient evidence of the various and numerous facts suggested by Justices Peckham and Harlan as proper to be considered in determining what are reasonable rates. Nor will there be found any sufficient evidence of the various and numerous facts that were actually considered by the Court in determining what were reasonable rates in the cases cited above.

I submit, therefore, that the evidence is wholly insufficient to enable either the Commission, or this Court, to intelligently decide that the rates to the shorter distance points involved in these cases are unreasonably high in and of themselves.

The Commission did not decide that the rates to the shorter distance points were unreasonably high. On the contrary, it treated the matter of *"unreasonable"* rates as merely subsidiary.

Trans. No. 69, p. 22 right col.

LXIII.

The First Section Continued.

In the case of Ames vs. U. P. Ry. Co., Mr. Justice Brewer said:

"The foundation of the idea of reasonableness is justice. That which is unjust cannot be reasonable; and when the strong arm of the Legislature is laid upon property invested in railroad transportation, it must be so laid as to do justice to such investors. There can be no justice in that which works to such investors a practical destruction of their property, thus invested. It must always be borne in mind that property put into railroad transportation is put there permanently. It cannot be withdrawn at the pleasure of the investors. Railroads are not like stages or steamboats, which, if furnishing no profit at one place, and under one prescribed rate of transportation, can be taken elsewhere, and put to use at other places and under other circumstances. The railroad must stay, and, as a permanent investment, its value to its owners may not be destroyed. The protection of property implies the protection of its value."

64 Fed. Rep., 176, 177, Ames vs. U. P. Ry. Co.

176 U. S., pp. 172-180, C. M. & St. P. R. R. Co. vs. Tompkins.

"Justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others."

154 U. S., 412, Reagan vs. Farmers' L. & T. Co.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Smyth et al. vs. Ames et al., 169 U. S., p. 547.

The Commission has failed to prove the value of either one of the railroads involved in these cases; and therefore it has failed to prove that the rates charged to the shorter distance points yield more than "a fair return upon the value of that which" appellees employ "for the public convenience."

LXIV.

The First Section Continued.

In order to ascertain whether a railroad company has, during any given period, received any compensation for the use of its property, it is necessary to know the results of its operations *as a whole*. The result of its operations as to any particular article, as coal, pig iron, etc., is of no value; because, though it may have carried those articles at or even under cost, the other articles carried by it may have yielded more than a reasonable profit upon the entire investment.

And so, though it may have carried some articles at rates which, looked at by themselves, would appear to be excessive, yet when considered in connection with the rates charged on the entire volume of traffic carried by it, will be found to be insufficient to yield a fair return upon the value of the road.

In the case of the Chicago & N. W. Ry. Co. vs. Dey, Mr. Justice Brewer said:

"Coming now to the question of the schedule as presented, I remark that the schedule, *as a whole*, must control, and its validity or invalidity *does not depend upon the sufficiency or insufficiency of the rates for any few particular subjects of transportation.*"

35 Fed. Rep., p. 881, C. & N. W. Ry. Co. vs. Dey.

In the case of Chicago, etc., Ry. Co. vs. Minnesota, Mr. Justice Miller, in a concurring opinion, said:

"That the proper, if not the only, mode of judicial relief against the tariff of rates established by the Legislature or by its Commission, is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fares as excessive, or establishing its right to collect the rate as being within the limit of a just compensation for the service rendered."

"That until this is done, *it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the question which ought to be settled in this general and conclusive method.*"

134 U. S., p. 460, Chicago, etc., Ry. Co. vs. Minnesota.

In its Eleventh Annual Report, the Commission states that the classifications now in use in this country embrace from 5,000 to 7,000 items.

11 Ann. Rep., I. C. C. (1897), p. 66.

How would it be possible for any tribunal to ascertain what would be a reasonable rate upon one of those items; as for instance, coal, or pig iron, without taking into consideration any of the remaining five or seven thousand articles?

In the cases at bar, the Court is asked to decide what are reasonable rates to the shorter distance points.

In case No. 69, the only rates involved are those from Cincinnati and other Ohio River points, to five local stations on the Western & Atlantic Railroad.

In case No. 68, the only rates involved are those from New

York and other North Atlantic ports, to six local stations on the Georgia Railroad.

In case No. 70, the only rates involved are those from New York, via Charleston, Augusta and Atlanta, to five local stations on the Atlanta & West Point Road.

It is evident that the Western & Atlantic Railroad carries a large amount of traffic that originates elsewhere than at Cincinnati and other Ohio River points; and that it carries a large amount of traffic that is not destined to the particular local stations involved in case No. 69.

It is evident that the Georgia Railroad carries a large amount of traffic that originates elsewhere than at New York and other North Atlantic ports; and that it carries a large amount of traffic that is not destined to the particular local stations involved in case No. 68.

It is evident that the Atlanta & West Point Railroad carries a large amount of traffic that originates elsewhere than at New York and other North Atlantic ports; and that it carries a large amount of traffic that is not destined to the particular local stations involved in case No. 70.

And yet, the Court is asked to single out the traffic destined to those particular local stations, from the particular points of shipments specified in the respective petitions, and to decide what are reasonable rates on those particular classes of traffic, without regard to what may have been the results of the operations of those companies under their schedules taken "as a whole."

LXV.

The First Section Continued.

The distance from Cincinnati to Marietta via the appellees' line in case No. 69 is 453 miles.

Trans. No. 69, p. 23 right col.

The appellees' rates for transporting freight from Cincinnati to Marietta are the following, in cents per 100 lbs., except as to class F, which is in cents per barrel of 200 lbs:

CLASSES	1	2	3	4	5	6	A	B	C	D	E	H	I
	127	109	96	79	65	50	38	45	35	30	56	65	62

Trans. No. 69, p. 23 right col.

The distance from New York via Augusta to Stone Mountain in case No. 68 is 1,032 miles.

Trans. No. 69, pp. 27 left col. and 35.

The appellees' rates for transporting freight from New York to Stone Mountain are:

CLASSES	1	2	3	4	5	6	A	B	C	D	E	H	I
	132	114	101	85	71	58	45	57	47	44	69	80	89½

Trans. No. 69, p. 27.

The distance from New York via Atlanta to West Point in case No. 70 is 971 miles.

Trans. No. 69, p. 35.

The appellees' rates for transporting freight from New York to West Point are:

CLASSES	1	2	3	4	5	6	A	B	C	D	E	H	I
	142	124	110	93	77	62	—	—	—	—	—	88	—

Trans. No. 69, p. 34.

I have in each case selected the shorter distance point to which the rates are highest.

It will be noticed that even if the tonnage carried were equally divided between the thirteen classes the average rates would be as follows in cents per 100 lbs., viz.:

From Cincinnati to Marietta..... 63 cents.
From New York to Stone Mountain..... 76 cents.

And on the seven classes complained of, in case No. 70, the average rate from New York to West Point would be ..... 98 cents.

I insist, with the utmost confidence, that such average rates are not only reasonable and just for transporting 100 pounds of freight such distances, but that they are exceedingly low rates. They are certainly lower rates than can be obtained by any other means of transportation, except rail.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
van den Berg.	p. 112	62	81
Culp	p. 124	82	69
Compton	p. . . .	93	99

I feel quite sure that history will not record an instance where 100 pounds of freight has been transported such distances for such average rates by any means of land transportation, other than rail.

How can it be affirmed with any degree of fairness that a rail

rate is unreasonably high, when it is shown to be less than ever has been obtained by any other means of land transportation?

Freight is generally transported by railroads a given distance in less time, and in better condition, than by any other means of transportation; and why should railroads be required to render this superior service at less rates than are charged by any other means of land conveyance?

It is contended by counsel for appellee that it is unfair to compare railroad rates with wagon rates, for the following, among other reasons:

1. Where a wagon or cart carries one ton of freight, a railroad carries thousands.

2. Where a wagon or cart carries freight one mile, a railroad carries it hundreds, or thousands, of miles.

3. Wagons and carts have no monopoly of transportation over a particular roadway.

As to the first and second reasons, it is true that a railroad train, or even a single freight car, can carry a much larger quantity of freight than can be carried in a wagon or cart. It is also true that railroads, by joining in through rates and through routes, can carry freight for much greater distances than it is usually carried in wagons or carts. But the fact that railroads can carry larger quantities of freight, for greater distances, than can be done by wagons or carts, simply demonstrates the superior service which railroads can and do render to the public. It furnishes no reason for holding that because they can, and do, render a superior service, they shall render it for a less rate than is charged for a vastly inferior service.

If it be said that as railroads can carry larger quantities of freight, and for greater distances within a given time, it is evi-

dence that they can afford to carry at a less rate per ton per mile than the rates charged by wagon, the answer is two-fold:

First: The financial result of the operations of the railroads in the United States since the inauguration of the railroad system, is one of almost universal bankruptcy. It is extremely doubtful whether 500 miles of connected railway can be found in the United States which has not, at some time or other, gone through bankruptcy.

No one can affirm with any degree of confidence what is the relative cost of railroad transportation as compared with the cost of wagon transportation.

Second: But whether railroads can afford to do so, or not, it is conceded that they do carry not only at very much less rates per ton per mile, than rates charged by wagon; but at rates so much less than wagon rates as to have driven wagons out of competition in all cases except where the transportation is for relatively short distances.

As to the suggestion that wagons and carts have no monopoly of transportation over a particular roadway, it is sufficient to say that, on the other hand, they are entirely relieved of the expense of constructing roadways, and contribute but little toward their maintenance.

As to the suggestion that railroads have a monopoly of transportation over their roadways, it is sufficient to say that they are subjected by law to severe government supervision and control, with a view to preventing them from using their monopoly to the detriment of the public. They are strictly prohibited from making any unjust discrimination, or giving any undue preference, or charging any unreasonable compensation.

The question, however, as to what is a reasonable compensation for a railroad to charge in a given case has been left by the

law to the final determination of the courts; and in considering that question, there is nothing in the law to prevent the courts from comparing rail rates with rates charged by wagon, by pack mules, or by any other means of land transportation.

LXVI.

The First Section Continued.

Appellees' rates to the shorter distance points have not prevented the shipment of freight; but, on the contrary, traffic has been shipped with profit under those rates, and has moved freely in competition with traffic to and from other points.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
Culp . . . . . p. 124		82	69
Compton . . . . . p. . . .		93	99

I submit with confidence that no set of rates can be condemned as unreasonable or unjust, *in and of themselves*, where the proof shows, as it does in these cases, that traffic has moved freely under those rates, and at a profit to the shipper or consignee.

LXVII.

The First Section Continued.

The following named witnesses, all of whom are experts in traffic matters, testify that, in their opinion, the rates to the shorter distance points involved in these cases are just and reasonable:

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
van den Berg. . . . . pp. 111, 112		61, 62	81
Culp . . . . . pp. 123, 124		82	68, 69

Brown. . . . . pp.	140, 141	123, 124	110
Lutz. . . . . pp.	158, 159, 160	130, 131	116
Winburn. . . . . pp.	167, 168	139	. . .
Knox. . . . . pp.	174	147	126
Biles . . . . . pp.	187, 188	158, 159	144
Compton. . . . . pp.	. . . . .	92, 93	99
Davant. . . . . pp.	. . . . .	74	. . .

The reasons given by said witnesses for their opinions are, among others, the following:

Said rates are fixed upon the lowest obtainable combinations; and traffic to such shorter distance points has the benefit of whatever competitive rates may exist at the nearest basing point, to which are added only such local rates to destination as the Georgia Railroad Commission may fix as reasonable.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
van den Berg. . . . pp.	112	62	81
Culp . . . . . pp.	124	82	69
Brown. . . . . pp.	140, 141	123, 124	110
Winburn. . . . . pp.	167, 168	139	. . .
Knox . . . . . pp.	174	147	126
Compton. . . . . pp.	. . . . .	93	99
Davant. . . . . pp.	. . . . .	74	. . .

Said rates to the shorter distance points have not prevented the shipment of freight; but, on the contrary, traffic has been shipped with profit under those rates, and has moved freely in competition with traffic to and from other points.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
Culp. . . . . pp.	124	82	69
Compton. . . . . pp.	. . .	93	99

Said rates to the shorter distance points are relatively just, as compared with rates to other points in the same section of the country similarly situated.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
Culp	pp. 124	82	69
Winburn	pp. ...	139	...
Biles	pp. ...	159	144

Said rates to the shorter distance points are not higher than are charged from other points of distribution to stations on other roads, under similar circumstances and conditions.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
Lutz	pp. 159	131	116
Biles	pp. 188	158, 159	144
Davant	pp. ...	74	...

Said rates to the shorter distance points compare favorably with other rates for similar distances and services.

	Trans. No. 68.	Trans. No. 70.
Knox	pp. 147	126
van den Berg	pp. 62	81

Said rates to the shorter distance points are lower than prevail in some of the other sections of the country.

van den Berg, Trans. No. 69, pp. 111, 112.

Said rates to the shorter distance points are lower than can be obtained by any other known means of transportation.

	Trans. No. 69.	Trans. No. 68.	Trans. No. 70.
van den Berg	pp. 112	62	81
Culp	pp. 124	82	68, 69
Compton	pp. ...	93	99

Said rates to the shorter distance points do not yield the carriers excessive revenue for the service performed.

Knox, Trans. No. 68, p. 147.
" " No. 70, p. 130.

It will be noticed that the reasons given by said witnesses for their opinions are eminently practical: and such as commend themselves to any one who considers rate-making *as a commercial, rather than a mathematical problem.* And I submit that the plain, practical, commercial reasons given by said witnesses for their opinions are of infinitely more value than *the mathematical or arithmetical calculations attempted by the Commission;* in which the Commission has attempted to use such statistical factors as the "average receipts per ton per mile;" the "estimated cost of carrying one ton one mile;" the "number of tons carried of freight earning revenue;" the "number of tons carried one mile;" the "average distance haul of one ton;" the "freight earnings per train mile," etc., etc.

In the cases at bar, the Court of Appeals in speaking of the reasonableness of the rates in controversy in those cases, says:

"The most careful consideration of the testimony brought up in the records in these cases does not disclose any evidence that was offered by the appellant (the Commission) in the Circuit Court tending to show that the rates, separately considered, to the respective points, are not reasonable and just; and the replies that were drawn by a most skillful cross-examination from the witnesses, called by the appellees, (the Railroad Companies), do not show or tend to show, that the rates to the respective points are not reasonable and just. On the contrary, the great volume of testimony, given by these witnesses (who show full competency to testify) is directly and clearly to the effect that the rates are reasonable and just. One witness gave as a reason for this opinion (for the subject is hardly susceptible of better proof than the opinion of experts) that the rates are fixed upon

the lowest obtainable combination of the rates to competitive points, with the local rates therefrom to the non-competitive points, so that the traffic to the non-competitive stations has the benefit of whatever reductions competition has effected in the adjustment of rates to the competitive points, and that the rates are lower than prevail in some of the other sections of the country, and lower than can be obtained by any other means of transportation, and are not higher than are charged from other points of distribution to stations on other railroads under similar circumstances and conditions. And another witness says the rates are 'just and reasonable, in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freight. Traffic has been shipped with profit under these rates. They are just, relatively, to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition, and added to the rates from Chattanooga to the several stations, which are the same for the same distance as the rates fixed by the Railroad Commission of Georgia.' These reasons do not convince the counsel for appellant, (the Commission) but appear to us to have weight."

93 Fed. Rep., pp. 88, 89, I. C. C. vs. W. & A. R. R. Co.

LXVIII.

The First Section Continued.

Counsel for the appellee, in his argument in the court below, instituted certain elaborate comparisons involving what are known as the "average receipts per ton per mile;" and contended that said comparisons demonstrated that the rates to the shorter distance points involved in these cases are unreasonably high.

The " average receipts per ton per mile " of a road cannot be used as a standard of reasonableness for the rates of that road on any particular traffic.

The " average receipts per ton per mile " is ascertained by dividing the " total freight revenue " of a railroad by the " number of tons carried one mile."

The " total freight revenue " of a company is ascertained by adding together the freight charges on thousands or millions of shipments, made under various conditions and circumstances. Some shipments consist of single packages, weighing perhaps less than 100 pounds. Other shipments are made in quantities of more than 100 pounds, but less than car loads; others are made in car load quantities; and others in train load quantities. Some of the freight shipped is very light and bulky, and of considerable value per ton; other freight consists of heavy, coarse articles, of comparatively small value per ton. Some shipments are made over short distances; others over long distances; and others over the entire length of the road. The freight charges per ton, per mile, necessarily vary within wide limits, from 8 or even 10 cents per ton, per mile, on first class freight, carried over only a few miles of the road between local stations, to 3½ mills per ton, per mile, on long-haul coal and mineral traffic, and long distance competitive traffic.

In order to ascertain the " number of tons carried one mile," it is necessary to keep an account of the actual distance each ton is carried. Each ton is then multiplied by the number of miles it is carried, so as to get its equivalent in tons carried one mile; and the aggregate of the equivalents in tons carried one mile shows the " number of tons carried one mile."

Of course, in actual practice, no one ton of freight is ever carried one mile, and the " number of tons carried one mile " is made up of thousands or millions of shipments of different

kinds of freight, carried over different parts of the line, and carried different distances. It is made up of costly silks carried from New York to West Point; and of cheap lime-stone rock carried five miles from some quarry to a furnace.

The "number of tons carried one mile" is of no more value in determining what are reasonable rates on each of the thirteen classes of traffic from Cincinnati to the local stations on the Western & Atlantic Railroad; or from New York to the local stations on the Georgia Railroad, and the local stations on the A. & W. P. Railroad, than the fact that the earth is the equivalent of a certain number of grains of sand, would be in ascertaining the reasonable price of a tombstone.

As stated above, it is by dividing the "total freight revenue" by the "number of tons carried one mile," that we ascertain the "average receipts per ton per mile."

As neither the divisor nor the dividend has the slightest relation to the reasonableness of rates, the quotient can have no relation to it.

One might as well divide the number of spikes in a railroad track by the number of cross-ties, and expect the quotient to show what are reasonable rates for each of the thirteen classes of traffic, between any two given points.

LIX.

The First Section Continued.

The "average receipts per ton per mile" of a road is of no value except to show the proportion which the high class traffic bears to the low class traffic of the road.

The tonnage and rates of a road remaining the same, its "average receipts per ton per mile" will increase as the pro-

portion which its high class traffic bears to its low class traffic, increases.

To demonstrate this fact mathematically, let us assume that the tonnage of any given road is equivalent to 2,000,000 tons carried one mile, in each of three consecutive years. During the first year, let us assume one-fourth of the tonnage to be class 1, and carried at 5 cents per ton; and three-fourths of the tonnage to be class A, and carried at 1 cent per ton. We would have:

500,000 tons of class 1 at 5 cents.....	$25,000
1,500,000 tons of class A at 1 cent.....	15,000
Or, 2,000,000 tons at 2 cents.....	$40,000

The " average receipts per ton per mile " for the first year, would be 2 cents.

During the second year, let us assume one-half of the tonnage to be class 1, and carried at 5 cents per ton; and the other half to be class A, and carried at 1 cent per ton. We would have:

1,000,000 tons of class 1 at 5 cents....	$50,000
1,000,000 tons of class A at 1 cent.....	10,000
Or, 2,000,000 tons at 3 cents.....	$60,000

The " average receipts per ton per mile " for the second year, would be 3 cents.

During the third year, let us assume three-fourths of the tonnage to be class 1, and carried at 5 cents per ton; and the remaining one-fourth to be class A, carried at 1 cent per ton. We would have:

1,500,000 tons of class 1 at 5 cents.....	$75,000
500,000 tons of class A at 1 cent.....	5,000
Or, 2,000,000 tons at 4 cents.....	$80,000

" The average receipts per ton per mile " for the third year, would be 4 cents.

We see that the tonnage remained the same, and the rates charged on classes 1 and A respectively remained the same during all three of the years, yet the "average receipts per ton per mile" for the third year was double what it was for the first year; and we see that it increased precisely as the proportion which the high class traffic bears to the low class traffic increased. But the demonstration does not throw any light whatever upon the reasonableness of the rates either on class 1 or class A.

So the fact that the rates charged on classified traffic from Cincinnati to local stations on the W. & A. R. R. pay more than "the average receipts per ton per mile" of that road only proves that the Cincinnati traffic is of a higher class than other classes of freight, in the carriage of which the W. & A. R. R. participates. The Court will judicially know, I suppose, that the grain traffic from the Northwest, via Atlanta, to the Carolinas, and to the coast, for domestic consumption, and for export, represents a vast tonnage of very low class freight; and that coal carried from North Georgia and East Tennessee, via Atlanta, to the Carolinas, and the coast, represents another vast tonnage of very low class freight. This vast tonnage of very low class freight necessarily makes the "average receipts per ton per mile" of the Western & Atlantic Railroad very small; but it does not prove that the rates charged by that road upon any class of freight are unreasonably high, or unreasonably low.

LXX.

The First Section Continued.

The "average receipts per ton per mile" of one road cannot be used as a standard of reasonableness for the rates of another road.

In the two last preceding sections of this argument, I have

shown that the "average receipts per ton per mile" of any particular road cannot be used as a standard of reasonableness for the rates of that road on any particular traffic; and *a fortiori*, it cannot be used as a standard of reasonableness for the rates of other roads.

Counsel for the appellant in his argument, in the court below, presented a table showing a comparison between the "average receipts per ton per mile" of a number of railroads; and among them were the New York, New Haven & Hartford Railroad, and the Norfolk & Western Railroad.

The "average receipts per ton per mile" of the former was very much higher than the "average receipts per ton per mile" of the latter. That fact demonstrates that the proportion which the high class traffic carried by the former bore to the low class traffic carried by it, was very much greater than the proportion which the high class traffic carried by the latter bore to the low class traffic carried by it. The fact is easily accounted for, when we remember that the New York, New Haven & Hartford Railroad is located in New England, and carries a large amount of dry goods, boots and shoes, and other high class traffic; while the Norfolk & Western Railroad is located in a mining country, and carries a large amount of low class mineral traffic. The disparity between the "average receipts per ton per mile" of those two roads, while it proves a corresponding disparity between the proportion of high class and low class traffic carried by them, respectively, has no tendency whatever to prove either that the rates charged by the New York, New Haven & Hartford Railroad on its high class traffic are too high, or that the rates charged by the Norfolk & Western Railroad on its low class traffic are too low.

LXXI.

The First Section Continued.

I have shown that the "average receipts per ton per mile" cannot be used as a criterion of the reasonableness of rates, because such "average receipts" has no relation whatever to the matter. But even if some such relation existed, it is self-evident that the value of a thing cannot be ascertained by applying, as a measure, the average value of a number of dissimilar things, which differ greatly in value as compared with each other, and as compared with the thing that is to be measured.

The "average receipts per ton per mile" represents the average received per ton per mile by a railroad for the transportation of hundreds of thousands or millions of shipments, made under varying conditions and circumstances. As stated above, some shipments consist of single packages, weighing, perhaps, less than one hundred pounds; some shipments are made in car load quantities; and some in train load quantities. Some of the freights are very light and bulky, and of considerable value per ton. Others consist of heavy, coarse articles, of comparatively small value per ton. Some shipments are made over short distances; others over long distances; and others the entire length of the road. The freight receipts per ton per mile necessarily vary within wide limits, from eight or even ten cents per ton per mile on first class freight carried over only a few miles of the road, to three and one-half mills per ton per mile, and even less, on long haul coal and mineral traffic.

No country merchant who keeps in his store a great variety of articles, differing greatly in value, would undertake to ascertain his "average receipts" per pound or per yard, and to sell all of his goods to his customers at a certain profit over and above his "average receipts." He would find plenty of customers for his dry goods, but none for his coffee and sugar.

LXXII.

The First Section Continued.

The official classification contains six classes, numbered from 1 to 6. Let us assume that the rates charged by a certain railroad, for a certain distance, on the several classes, are, in cents per 100 pounds, as follows:

On class 1.....6 cents
On class 2.....5 cents
On class 3.....4 cents
On class 4.....3 cents
On class 5.....2 cents
On class 6.....1 cent

The average of said rates is 3.5 cents. If the average of rates is to be taken as the standard of reasonableness, the rates on the first three classes would be too high, inasmuch as they exceed the average; and, in revising the tariff, the new rates would be as follows:

On class 1.....3.5 cents
On class 2.....3.5 cents
On class 3.....3.5 cents
On class 4.....3 cents
On class 5.....2 cents
On class 6.....1 cent

The average of those rates is 2.75 cents; and again using the average as a maximum, the second revision would stand as follows:

On class 1.....2.75 cents
On class 2.....2.75 cents
On class 3.....2.75 cents
On class 4.....2.75 cents

On class 5.....2 cents
On class 6.....1 cent

The average of those rates is 2.33 cents; and again using the average as a maximum, the third revision would stand as follows:

On class 1.....2.33 cents
On class 2.....2.33 cents
On class 3.....2.33 cents
On class 4.....2.33 cents
On class 5.....2 cents
On class 6.....1 cent

The average of those rates is 2.05 cents; and again using the average as a maximum, the fourth revision would stand as follows:

On class 1.....2.05 cents
On class 2.....2.05 cents
On class 3.....2.05 cents
On class 4.....2.05 cents
On class 5.....2 cents
On class 6.....1 cent

The average of those rates is 1.86 cents.

The foregoing illustrations are sufficient to demonstrate that if the average of rates is to be the standard of reasonableness, all rates above the average must be adjudged to be too high, and be reduced so as not to exceed the average; that at each revision the average is necessarily reduced; and that it requires only a certain number of revisions to reduce all of the rates to zero.

LXXIII.

The First Section Continued.

Counsel for the appellant with reference to the value of such data as "average receipts per ton per mile," etc., may quote the following extract from the cross-examination of J. M. Culp:

"Is not such data useful to some extent in determining whether an existing rate is or is not excessive?"

"Answer. It is useful in determining whether *all the rates* are excessive. In other words, the average receipts of a road per ton per mile might be so much that, taken in connection with other things, it might be held that the rates were excessive."

Trans. No. 69, p. 133.

Counsel's contention is that if such data is useful in determining whether *all* the rates are excessive, it must be useful in determining whether the rates on classified freight to the shorter distance points in these cases are excessive.

It would be equally logical to contend that if a certain factor, in connection with others, may enable us to solve a certain equation, the same factor, will, in the absence of the others, enable us to solve any part of the equation.

If you ask a gas company engaged in manufacturing gas for illuminating purposes, what it costs to produce a ton of coke, its reply must be that this depends on what the public will pay for the gas. And if you ask the company what it costs to produce a thousand cubic feet of gas, its reply must be that this depends on what the public will pay for the coke.

The working expenses of the whole operations of the company are so much. The result of those operations is the output of a certain quantity of gas, and a certain quantity of coke. But you cannot say what is a reasonable rate to be charged for the gas, until you know what rate the company can obtain for the coke; and you cannot say what is a reasonable rate to be charged for the coke, until you know what rate the company can obtain for the gas. If the company can obtain such rates for the gas as will enable it to approximate a fair return on its investment, it can afford to accept exceedingly low rates on the coke.

Now take, on the other hand, a coke company engaged in manufacturing coke for neighboring blast furnaces. It can use, in heating its coke ovens, a certain quantity of the gas which is produced in making the coke, but no more; and for the remainder of the gas produced, the company has probably no market at all. In this case, evidently, the coke must be looked to as the main reliance to earn a fair return on the investment, and the most that can be expected of the gas is that it shall help, in some slight degree, to lighten the burden.

In the case of a railroad company, the result of its operations *as a whole* is the transportation of a certain number of passengers, a certain quantity of mail and express matter, and a certain number of tons of freight; and to those operations, *as a whole*, it must look for a reasonable return upon the fair value of its investment.

What is denominated "local traffic" is affected by competition between product and product, and between "market and market," as shown in Section XLVIII. of this argument.

What is denominated "competitive traffic" is affected not only by competition between product and product, and between market and market, but also by competition between carrier and carrier.

In the case of one railroad company, only one-fourth of its traffic may be "local," and the remaining three-fourths "competitive;" while, in the case of another company, the proportions may be exactly reversed.

Whatever may be the proportion which the "competitive traffic" bears to the "local traffic" of a company, the company must, of necessity, accept such rates on its "competitive traffic" as its rivals may offer; and if the revenue derived from its "competitive traffic" fails to pay a reasonable return upon the value of the investment, the deficit must be made up by

increasing the rates on the "local traffic"—if it be possible. And if competition between product and product, or between market and market, prevents an increase in the rates on the "local traffic," the company must cease operations.

In the case of a railroad company, as in the cases of the gas company, and the coke company, referred to above, you must look to the operations of the company *as a whole,* and before you can decide whether the rates charged upon one source of revenue are reasonable, you must ascertain what amount can be realized by the company from its other sources of revenue.

We see, therefore, that while, as Mr. Culp says, such data as the "average receipts per ton per mile," etc., may, possibly, be useful in determining whether *"all the rates* are excessive;" it is of no value whatever in determining the reasonableness of rates charged on any particular portion of the traffic.

In Section LXIV. of this argument, I showed that in order to determine whether the rates of a railroad are reasonable *its operations as a whole* must be considered.

LXXIV.

The First Section Continued.

Counsel for the appellant, in his argument in the court below, referred to the fact that such data as "the average receipts per ton per mile" has been kept and recorded by the roads for their own use for a period long anterior to the passage of the Act to Regulate Commerce, and is still so kept and recorded; and he contended that such data has been kept by the roads for the purpose for which he seeks to use it in these cases; namely, to enable them to see whether their rates are too high or too low.

In the first place, the testimony does not show that all rail-

roads keep such data. On the contrary, a good many of them do not keep it at all.

Trans. No. 69, p. 133.

In the second place, such railroads as have kept such data, have done so (as we may infer) for purposes entirely foreign to the subject of rate construction.

Thus—"The average receipts per ton per mile" is of value in ascertaining the proportion which the high class traffic bears to the low class traffic of a road; so that if the average is found to be too low, the Traffic Manager may look around to see if he can increase the proportion of the high class traffic on his road, by soliciting additional traffic of that class.

So, such data as "the number of tons carried one mile" is of value for the purpose of giving those officers of the company, who are charged with scrutinizing its expenditures, a basis to compare the results of one month, with the corresponding month of the preceding year, and the results of one year with a preceding year, or years.

They are also of value in measuring the amount of work actually performed in the transportation of freight during a year; and in enabling railroad officers to ascertain, by comparison, the actual increase or decrease in the freight traffic.

The same may be said of such data as the "estimated cost of carrying one ton one mile," etc., etc., etc.,

Those railroads which have kept such data have never been able to use them in rate construction, for the simple reason that freight rates must be controlled by commercial laws affecting competition; and they cannot be fixed by arbitrary formulae.

No practical traffic manager has ever used any such data in the construction of a freight schedule; and no one else has ever attempted to do so, except the Interstate Commerce Commission.

LXXV.

The First Section Continued.

Counsel for appellant, in his argument in the court below, relied upon the "estimated cost of carrying one ton one mile," as one of the standards for measuring the reasonableness of rates.

The "estimated cost of carrying one ton one mile" on a road cannot be used as a standard of reasonableness for the rates of that road, on any particular traffic.

The "estimated cost of carrying one ton one mile" is ascertained by dividing the total expenses "assignable to the freight service" by the "number of tons carried one mile."

I have shown in Section LXVIII. of this argument how to ascertain the "number of tons carried one mile." But it has been found impracticable to invent any satisfactory method of determining what proportion of the total expenses of a railroad are properly "assignable to the freight service," as contra-distinguished from the passenger service; the mail service; the express service, etc.

The total expenses of a railroad company are made up by adding together the expenses of—

1. Maintenance of way and structures;
2. Maintenance of equipment;
3. Conducting transportation;
4. General expenses;
5. Fixed charges.

There are ten subdivisions of expenses classified under "Maintenance of way and structures."

There are nine subdivisions of expenses classified under "Maintenance of equipment."

There are twenty-seven subdivisions of expenses classified under "Conducting transportation."

There are seven subdivisions of expenses classified under "General expenses," and

Four subdivisions of expenses classified under "Fixed charges."

See Classification of Operating Expenses as prescribed by the Commission, taking effect July 1, 1894.

It appears from the Fourth Annual Report on the "Statistics of Railways in the United States" for the year ending June 30, 1891, pp. 392, 393 and 438, that the expenditures of all the railways of the United States, which made reports to the Commission, were as follows:

For Maintenance of Way and Structures	$153,671,576	
For Maintenance of Equipment	117,047,895	
For Conducting Transportation	384,385,458	
For General Expenses	75,926,707	
Operating Expenses, nine roads, "unclassified"	856,257	$ 731,887,893
Fixed Charges (p. 438)		326,886,541
Total Operating Expenses and Fixed Charges		$1,058,774,434

of which 65.31 per cent. is assignable to operation, and 34.69 per cent. is assignable to fixed charges.

In order to ascertain the "estimated cost of carrying one ton one mile," it is necessary to apportion the items of expense assignable to "operation" between the passenger, mail, and express service, on the one hand, and the freight service, on the other.

No rational basis for such an apportionment can be established in respect to a large number of those items.

For example: The expenses of repairs of roadway, repairs and renewals of bridges and culverts, repairs and renewals of fences, and repairs and renewals of telegraph, etc., etc., etc., have no known relation to the volume of passenger or freight traffic. Those expenses are not materially affected by the volume of traffic, either passenger or freight.

The above are only a few of many of the items that cannot be properly apportioned between the passenger and freight traffic.

The Commission having become convinced of the futility, not to say absurdity, of the attempt to apportion the expense between the freight and passenger service, no longer requires railroad companies to make such apportionment in their reports to the Commission. Such apportionment was required of the companies at the time these cases were heard before the Commission, and the Commission in its Report and Opinion in these cases, gives the "estimated cost of carrying one ton one mile" on the different roads involved. But since 1893 the Commission has not required the companies to make any such apportionment.

See Statistics of Railways, 1893, p. 81.

The reason why it is impossible to apportion with accuracy the cost of service among the items of traffic is thus stated by the Commission In Re Southern Ry. & S. S. Association, sometimes cited as In Re L. & N. R. R.:

"First of all, when it is undertaken, there must be an apportionment between the passenger traffic and the freight traffic; and if we suppose this to be made with reasonable accuracy, there must then be a like apportionment between the different kinds and classes of freight. Freight comes to a road in infinite variety; some heavy, some light, some in large packages, some in small, some perishable or of a special value and requiring peculiar accommodations and care; it is picked up in varying quantities at numerous stations, to be carried differing distances, some-

times on fast trains and sometimes on slow; the service is performed by men whose compensation differs, but the most of whom have something to do with all branches of the traffic, so that all assist in carrying it on over a road and by means of buildings, appliances, and equipment which have been provided for the whole. Any attempt to apportion the cost, therefore, would, at the best and under the most favorable circumstances, only reach an approximation. *This is so well understood, the world over, that the propositions which from time to time have been made in other countries to measure the charges of the carrier by the cost of carriage solely have always been abandoned after investigation.*"

1 Interstate Commerce Rep., p. 282, right col.

But if the cost could be ascertained, it could not be used as a rate-making factor. Upon this subject, the Commission says:

"On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles which, within small bulk or weight, concentrate great value, would, on that system of making them, be absurdly low; low when compared to the value of the article, and perhaps not less so when the comparison was with the value of the service in transporting them."

1 Ann. Rep., I. C. C. (1887), p. 30.

I have shown in Sections LXVIII. to LXXIV. of this argument that an arbitrary standard, such as the "average receipts

per ton per mile," cannot be used for fixing rates; and the same is equally true of the arbitrary standard styled the "estimated cost of carrying one ton one mile."

1 Ann. Rep., I. C. C. (1887), p. 30.

One of the chief errors into which the Commission has fallen in attempting to fix rates for carriers, as well as in attempting to judge of the rates fixed by carriers, is in supposing that rates can be constructed according to certain mathematical formulæ; that some kind of an equation can be invented, in which certain statistical data can be arranged as factors, and that by the solution of such equations it can be ascertained what are reasonable rates on any given article of freight, for any given distance, on any given railroad. Among the factors which it has attempted to use in constructing such equations have been the "average receipts per ton per mile;" the "estimated cost of carrying one ton one mile;" the "number of tons carried of freight earning revenue;" the "average distance haul of one ton;" the "freight earnings per train mile," etc. But neither one, nor all, of such factors can be used in the practical business of rate-making.

Rates of freight are subject to the commercial law of supply and demand. Competition between rail lines and water lines; competition between product and product; and competition between market and market are the factors which must govern railroad companies in the establishment of tariffs. No railroad freight tariff, not even a local freight tariff, can now be established arbitrarily by a railroad company. In fact, it cannot be said that railroad companies make their rates at all, at the present time. All that they can now do is to adjust them from time to time, to the surrounding conditions and circumstances as they may exist, and no regard can be paid to any kind of mathematical formulæ, or scientific theories.

In Texas & Pacific Ry. Co. vs. I. C. C., known as the "Import Case," this Court quotes from Wills, Judge, the following:

" I first observe that these are, in my judgment, eminently practical questions, and if this court once attempts the hopeless task of dealing with questions of this kind with any approach to *mathematical accuracy*, and tries to introduce a precision *which is unattainable in commercial and practical matters*, it would do infinite mischief and no good."

162 U. S., p. 225, T. & P. Ry. Co. vs. I. C. C.

This Court also quotes from Lord Herschell as follows:

" I quite agree with Mr. Justice Wills that it is impossible to exercise a jurisdiction, such as is conferred by this section, *by any process of mere mathematical or arithmetical calculation.* When you have a variety of circumstances, differing in the one case from the other, you cannot say that a difference of circumstances represents, or is equivalent to such a fraction of a penny difference of charge, in the one case, as compared with the other. A much broader view must be taken, and *it would be hopeless to attempt to decide a case by any attempted calculation.* I should say that the decision must be arrived at broadly and fairly, by looking at all the circumstances of the case, that is, looking at all the circumstances which are proper to be looked at, etc."

162 U. S., pp. 227, 228, T. & P. Ry. Co. vs. I. C. C.
73 Fed. Rep., p. 421, I. C. C. vs. L. & N. R. R.
74 Fed. Rep., p. 721, I. C. C. vs. Ala. Mid. Ry. Co. et al.

LXXVI.

The First Section Continued.

Counsel for the Commission, on cross-examination, asked several of the defendants' witnesses a series of questions, a sample of which is as follows:

"(37) Q. Are the rates from Cincinnati to Calhoun, Adairs-

ville, Cartersville, Acworth, and Marietta reasonable in and of themselves?

A. I think they are.

(38) Q. Are the lower rates from Cincinnati, through those intermediate points, and for the longer hauls through those points, to Atlanta, also, in your opinion, reasonable in and of themselves?

A. Yes, sir.

(39) Q. Is a rate reasonable in and of itself which does not yield the carrier a *proper remuneration* over and above *the cost of service of carriage?*

A. I should say not. If carried for less than cost, it would be unreasonably low."

Brown's Dep., Trans. No. 69, pp. 155, 156.
Biles' Dep., Trans. No. 69, p. 194.
Knox's Dep., Trans. No. 69, p. 183.
Lutz's Dep., Trans. No. 69, p. 164.
Culp's Dep., Trans. No. 69, p. 131.
van den Berg's Dep., Trans. No. 69, p. 122.
Winburn's Dep., Trans. No. 69, p. 171.

"(9) Q. Do the Atlanta rates yield the carriers revenue in excess of *the cost of the service of carriage?*

A. In my opinion, they do."

Lutz, Trans. No. 69, p. 164.
Winburn, Trans. No. 69, p. 171.
Biles, Trans. No. 69, p. 194.

Upon such testimony, counsel for the appellant argued in the court below that, if the Atlanta rates yield the carrier "a *proper* remuneration" over and above *"the cost of service of carriage,"* or *"the cost of transportation,"* and if those rates are reasonable in and of themselves, the higher rates charged to the shorter

distance points must yield the carrier an *excessive* "remuneration" over and above *"the cost of service of carriage,"* or *"the cost of transportation,"* and must, therefore, be unjust and unreasonable in and of themselves.

The argument, while plausible, is unsound. It assumes that there can be but two classes of rates, i. e., those which are "unreasonably low" and those which are "unreasonably high;" and that every rate must take one or the other of those classifications. It might as well be said that if the ocean is not at low tide, it must be at high tide; or it might as well be said that if the water in a river is not low it must be high. In speaking of tides, we have "high tide," "low tide," "mean tide," "spring tide," "neap tide," etc., with various gradations between them. So, in speaking of the stage of water in a river, we have "extreme high water," "low water," "extreme low water," etc.; and between "extreme high water," and "extreme low water," there are as many gradations as there are fractions of an inch in the difference between the two. So a rate may be "high," "higher," or "very high;" or it may be "low," "lower," or "very low." It may be "low" without being *"unreasonably* low," or it may be "high" without being *"unreasonably* high."

The argument also assumes that "a *proper* or *sufficient* remuneration over and above *the cost of service of carriage,"* or *"the cost of transportation,"* must refer to some *definite, fixed* per cent. of remuneration; and that any remuneration over or under that *fixed* per cent. must necessarily be *im*proper or excessive. But the phrase *"proper* or sufficient remuneration" is as flexible as the phrases "reasonable rate," "high tide," "low tide," "high water," "low water," etc.

Though a merchant may realize a "proper or *sufficient* remuneration" over and above the cost of a handkerchief when he sells it for 25 cents, it by no means follows that he would realize an *im*proper or excessive "remuneration" if he should

sell its duplicate for 30 cents; so, though a farmer may realize a "*proper* or *sufficient* remuneration" over and above the cost of raising cotton when he sells a part of his crop at 7 cents per pound, it by no means follows that he would realize an *im*proper or excessive "remuneration" if he should sell the remainder of his crop at 9 cents per pound.

So, though the carriers in these cases may realize "a *proper* or *sufficient* remuneration over and above *the cost of the service of carriage*" or "*the cost of transportation*" from the rates charged to Atlanta or Opelika; and though they may realize a somewhat greater "remuneration over and above *the cost of the service of carriage*" or "*the cost of transportation*" from the rates which they charge to the shorter distance points; the remuneration realized from the latter may be as "proper" as that which is realized from the former.

Mr. Winburn, in answer to a question whether, in his opinion, a rate is a reasonable rate "which does not give the carrier a proper remuneration over and above *the cost of service of the carriage,*" answers as follows:

"That depends on what we call a *proper* remuneration above *the cost of the carriage.* It seems to me there are a great many cases where a rate would be reasonable if it was above the *cost of carriage* to *any extent,* dependent largely upon the movement of traffic in different directions."

Trans. No. 69, p. 171.

Mr. Culp said: "In my opinion a road is always justified in taking additional traffic, or traffic which it otherwise could not get, to the extent of making a rate as low as *the actual movement expense incurred in the movement of that traffic.*"

Trans. No. 69, p. 131.

Mr. van den Berg said "where freight pays the *additional expense in hauling it,* it is no burden upon any other traffic."

Trans. No. 69, p. 123.

Mr. Lutz said: "There are times when we accept certain freight that we would not accept at other times. I will take the local freight (train), for instance, that will run between Atlanta and West Point. That train has got to run. We have got to pay the engineer and we have got to pay the crew; and by adding on probably one or two more cars, or something of that kind, it probably would not add to the cost of the train but very little more."

Trans. No. 69, p. 164.

The phrase "the cost of service of carriage," and the phrase *"cost of transportation,"* as used by the witnesses, refer to the *"cost of movement* of the *particular traffic;"* and they do not include *"the fixed charges* of the road."

This is illustrated by the following extract from the cross-examination of Mr. van den Berg, in case No. 69:

"Q. 2. If a given rate to a given point does not pay *operating expenses and also something on the dividend and fixed charges,* would not a part of the burden of paying those dividends and fixed charges, which ought to be borne by the traffic to that point, have to be borne by the traffic to other points?"

"A. I think not. Where freight pays *the additional expense in handling it,* it is no burden upon other traffic."

Trans. No. 69, p. 122.

The distinction between *"the cost of movement* of the particular traffic," and the "whole cost of operation," which includes *"the fixed charges* of the road," as well as the "operating expenses," is thus stated by the Commission in its First Annual Report, in commenting upon rates on long haul traffic: "By this, however, is meant only *the cost of movement of the particular traffic,* leaving out of view the *fixed charges of the road,* which must, in any event, be provided for, whether the long haul traffic is or is not taken. This distinction between *the cost*

of movement and *the fixed charges* often becomes of importance in such cases as that of the lumber trade just mentioned. . . . The *fixed charges of the road* may, for the purpose of illustration, be assumed to equal one-half of the whole (cost of operation), *the cost of movement* of freight the other half. The rates *made* were doubtless calculated to cover the whole (cost of operation), with a margin for profit, and were so laid that all traffic would contribute toward both *fixed charges* and *cost of movement*. But now comes this new business, and, from the nature of the case, low rates are a necessity to it; it can pay perhaps little, if anything, more than half what is paid by other traffic. But taking it will not increase perceptibly the *fixed charges* of the road, because those are made up of items that must be paid, whether the traffic is large or small. What is added to the cost by taking it (the traffic) is simply the expense *of its own handling and movement;* and, upon the supposition made, there might perhaps be gain to the road, instead of loss, in taking it at anything above half the rates which are levied upon other traffic corresponding to it in classification. It might, therefore, be carried at such rates without wrong to any one."

1 Annual Rep., I. C. C. (1887), p. 73.

To the same effect is the testimony of Mr. Culp, who said: "Now, there may be average cost, or estimated cost, *including fixed charges;* there is the cost which leaves out the fixed charges and takes (in) all other kinds of expense; then there is *a cost which pertains simply to the movement of a particular business*, (i. e.) a cost which is incurred only because that particular business is moved."

Trans. No. 69, p. 131.

When the witnesses say that the Atlanta rates "yield the carrier a proper or sufficient remuneration over and above *the cost of the service of carriage*," or "*the cost of transportation*," they use those phrases as equivalent to the phrase "cost of movement;" which does not include "the fixed charges of the road."

It is manifest, however, that though the Atlanta or Opelika rates may pay a proper or sufficient remuneration over and above *"the cost of movement,"* the carriers would be justified in increasing them until they would also pay a proper remuneration over and above *"the fixed charges;"* and they would doubtless do so, if competition at Atlanta and Opelika would permit.

LXXVII.

The First Section Continued.

Counsel for appellant, in the court below, vigorously attacked what are known as "combination rates." Such rates are described by Commissioner Walker as follows:

"The rates to local points are made by adding to the competitive rates at the nearest competitive point, the local rate from that point."

1 I. C. Rep., p. 635, Harwell vs. C. & W. R. R.

I have heretofore explained, in Sections XXIII., XXV. and XXVII. of this argument, how the "combination rates" are made to the shorter distance points involved in these cases.

It will be remembered that the "combination rates" on the Western & Atlantic Railroad are made by adding to the competitive rates which prevail from Cincinnati to Chattanooga, the local rates of the W. & A. R. R., from Chattanooga to destination; and that those local rates are from 10 to 50 per cent. less, as a general rule, than the local rates charged for similar distances on any other road in Georgia, except the Rome Railroad, and the Georgia Railroad.

It will be remembered that the "combination rates" on the Georgia Railroad are made by adding to the competitive rates which prevail from New York to Augusta, or from New York to

Atlanta, the local rates of the Georgia Railroad from Augusta or Atlanta to destination; selecting Augusta, or Atlanta, as the basing point, according as the one or the other gives the lowest total through rate to destination.

Persons living at local stations on the Georgia Railroad have the choice between the low competitive rates prevailing from New York to Augusta and Atlanta, respectively; and they are charged in addition thereto only such local rates as are fixed by the Georgia Railroad Commission, which rates are, as a general rule, from 10 to 50 per cent. less than those charged by any other railroad in Georgia, except the Rome Railroad, and the Western & Atlantic Railroad.

It will be remembered that the "combination rates" on the Atlanta & West Point Railroad to Grantville, Hogansville and LaGrange, are made by adding to the competitive rates which prevail from New York to Atlanta, the local rates of the A. & W. P. Railroad from Atlanta to those stations; that the combination rates on the first six classes to West Point are made by adding to the competitive rates which prevail from New York to Opelika the local rates of the A. & W. P. Railroad from Opelika to West Point, because that gives a lower combination than to base them upon Atlanta; and that the rates from New York to Newnan are less than would be made by combining either upon Atlanta or Opelika.

It will be noticed that the shorter distance points have the advantage of all the competition that exists at the nearest competitive point; that they are only charged in addition thereto such local rates as the Georgia Railroad Commission may fix as reasonable from the competitive point to destination; and that said Commission is organized under a law which provides that no member of the Commission shall be in any way interested in a railroad.

As an illustration of the principle upon which the combination rates in these cases are made, the rate on first class from Cincinnati to Acworth is $1.24 per 100 pounds. It is made up of the low competitive rate from Cincinnati to Chattanooga of 76 cents, and a local rate, as fixed by the Georgia Railroad Commission, from Chattanooga to Acworth of 48 cents, making a total of $1.24.

There is no complaint that the rate of 76 cents per 100 pounds, from Cincinnati to Chattanooga, is unreasonably high; and, as it is the result of severe competition, the presumption is that it is very low.

There is no complaint that the rate of 48 cents from Chattanooga to Acworth is unreasonably high for a shipment originating at Chattanooga; and, as it is a rate fixed by the Georgia Railroad Commission, the presumption is that it is very low.

It would seem that a combination of two rates, each of which is just and reasonable for the distance covered by it, would result in an aggregate rate that is just and reasonable for the sum of those distances.

88 Fed. Rep., p. 194, I. C. C. vs. W. & A. R. R. Co.

Similar rates were attacked in the Alabama Midland Case, and were sustained by the courts in that case.

74 Fed. Rep., p. 717, I. C. C. vs. Ala. Midland Ry. Co.

If the aggregate rate from Cincinnati to Acworth is to be reduced on first class freight from $1.24 to $1.07 per hundred pounds, which amounts to a reduction of 17 cents, the question arises as to whether the reduction shall be made north of Chattanooga, or south of Chattanooga. If the reduction should be made north of Chattanooga it would reduce the first class rate from Cincinnati to Chattanooga from 76 cents to 59 cents, and as the present rates from Cincinnati to Chattanooga are very low, it would seem unjust to compel any further reduction of them,

If it be said that the reduction should be made between Chattanooga and Acworth, then, as the present rates from Chattanooga to Acworth are very low, it would seem unjust to compel any further reduction of them.

LXXVIII.

The First Section Continued.

In the case of A. T. & S. F. R. R. vs. D. & N. O. R. R., 110 U. S., p. 684, this Court held that at Common Law a railroad company is not bound to carry beyond its own line; and it has been repeatedly held at Circuit that there is nothing in the Act to Regulate Commerce to compel connecting railroads to form through rates, or to join in making through rates.

37 Fed. Rep., 572, K. & I. Bridge Co. vs. L. & N. R. R. Co.

41 Fed. Rep., 563, L. R. & M. R. Co. vs. St. L., I. M. & S. Ry. Co.

51 Fed. Rep., 474, 475, O. S. L. & U. N. Ry. Co. vs. N. P. R. Co.

52 Fed. Rep., 915, C. & N. W. Ry. Co. vs. Osborne.

59 Fed. Rep., 402, 403, L. R. & M. R. Co. vs. St. L., I. M. & S. Ry. Co.

63 Fed. Rep., 778, 779, L. R. & M. R. Co. vs. St. L. & S. W. Ry. Co.

65 Fed. Rep., 41, St. Louis Drayage Co. vs. L. & N. R. R. Co.

86 Fed. Rep., 419, Gulf C. & S. F. Ry. Co. vs. Miami S. S. Co.

88 Fed. Rep., 662, Southern Indiana Exp. Co. vs. U. S. Exp. Co.

93 Fed. Rep., p. 92, I. C. C. vs. W. & A. R. R. Co., et al.

To illustrate: The Western & Atlantic Railroad is under no legal obligation to make joint through rates with the lines north of Chattanooga. It has a perfect right to refuse to recognize any through bill of lading that may be issued by lines north of Chattanooga for the transportation of freight from Cincinnati or other Ohio River points to local stations on its line.

When freight is shipped from Cincinnati, consigned to a local station on the W. & A. R. R., it is bound to receive it at Chattanooga; carry it to the local station; and there deliver it to the consignee; but the W. & A. R. R. has the perfect right to charge on such freight its full reasonable local rate from Chattanooga to such local station.

110 U. S., 684, A., T. & S. F. R. R. vs. D. & N. O. R. R.

The service which is rendered by the W. & A. R. R. in the transportation of freight shipped from Cincinnati, consigned to one of its local stations is, so far as mere service is concerned, substantially the same as that rendered by it in the transportation of freight which originates at Chattanooga, consigned to such local station. If the freight be shipped from Cincinnati, the W. & A. R. R. receives it from one of the roads north of Chattanooga; while if the freight originates at Chattanooga, it receives it from the consignee; and in either case it carries the freight to its local station on the same train, and delivers it to the consignee.

The mere service rendered by it being substantially the same, it has the right to charge the same rate whether the freight be shipped from Cincinnati, or originates at Chattanooga.

If the Western & Atlantic Railroad sees proper to recognize through bills of lading issued by the roads north of Chattanooga, and to make joint through rates with those roads from Cincinnati to Acworth, and other local stations on the Western & Atlantic

Railroad, it is a purely voluntary act on its part, and it can withdraw from the arrangement whenever it sees proper to do so.

If the Western & Atlantic Railroad should refuse to-morrow to recognize through bills of lading issued by the roads north of Chattanooga, and refuse to make joint through rates with those roads, persons who live at local stations on the line of the Western & Atlantic Railroad would have to pay the rate from Cincinnati to Chattanooga, and, in addition thereto, the local rates of the Western & Atlantic Railroad from Chattanooga to destination. In other words, they would have to pay as high, if not higher, rates than they now pay; and they would be deprived of the convenience of through bills of lading, and through rates.

The mere fact that the Western & Atlantic Railroad and the roads north of Chattanooga have endeavored to accommodate the shipping public at the local stations on the line of the W. & A. R. R. by joining in through rates, and recognizing through bills of lading, which the public have no right to require as matter of law, furnishes no reason for adjudging the through rates to be unreasonably high, merely because they are made by combining the reasonable rates which those roads would have respectively charged, if such through rates had not been agreed upon, and such through bills of lading had not been recognized. If the rates charged by those roads for transportation over their respective lines were just and reasonable before they were combined into through rates, the through rates which result from such combination must themselves be just and reasonable.

Any other view of the question will force the railroads of this country to abandon the system of through rates and through bills of lading, in order to be allowed to charge their own reasonable rates.

Such a course would not result in any decrease in the rates between different points.

On the contrary, it would result in an increase of charge; because it would force the carriers to return to the mode of doing business which prevailed before the present system of through rates and through bills of lading was adopted. In former times, a person doing business at Cincinnati, who wished to ship to Acworth, Ga., would consign the shipment in the care of a commission merchant at Chattanooga. The total charges on such a shipment would be made up, for instance, of the rate of 76 cents per 100 pounds on first class freight from Cincinnati to Chattanooga; the commission merchant's factorage charge at Chattanooga; and the local rate of the Western & Atlantic Railroad of 48 cents from Chattanooga to Acworth. In a word, the total charge would exceed the present combination rate, by the amount of the commission merchant's factorage charge at Chattanooga; and the shipping public would be deprived of the convenience of through rates, and through bills of lading.

LXXIX.

The First Section Continued.

Combination rates are not peculiar to the South.

In its eleventh annual report the Commission says:

"We have before us at the present time a complaint which alleges that the rate from Chicago, Ill., to Kearney, Neb., is discriminating and unlawful. The rate is made in this way: There is an interstate rate from Chicago to Omaha. The rate from Omaha to Kearney is fixed by the Railroad Commission of the State of Nebraska. The through rate from Chicago to Kearney is made by adding to the through rate to Omaha, the local rate from Omaha to Kearney. Merchandise is transported by continuous shipment upon through bills of lading from Chicago to Kearney at this rate." . . . "We might order a

reduction of the whole rate, *but we could not determine how that reduction should be shared by the different carriers.* If the carriers refuse to agree about that, *it is difficult to see how the order could be enforced.* Clearly, *to make and enforce such an order we must have power to determine the divisions of this through rate between the different roads making up the joint line.*

"KEARNEY IS BUT ONE OF THOUSANDS OF PLACES TO WHICH THE THROUGH RATE IS MADE UPON THIS SAME PLAN. A large part of interstate rates are joint rates, in reference to which the same thing would be true."

11 Ann. Rep., I. C. C. (1897), p. 27.

It will be noticed that "combination rates" are by no means peculiar to the South. If Cincinnati be substituted for Chicago, Chattanooga be substituted for Omaha, and Acworth be substituted for Kearney, the analogy between the cases at bar and the case referred to by the Commission is obvious. And as the Commission conceded its inability to relieve the difficulty in that case, I do not see how this Court can be expected to do it in these cases.

LXXX.

The First Section Continued.

There are three principles upon which combination rates are made.

First: That all rates should increase with the distance, if competition will permit.

Second: That where competition conflicts with distance, competition must control.

Third: That those cities, which by reason of their strategetical position can command competitive rates, are entitled to the advantage of their location.

The appellant not only concedes that all rates should be constructed according to distance, but it insists that where distance and competition conflict, distance should control; and that railroad companies have no right to recognize the strategetical advantages, which competitive places enjoy, unless the railroads reduce all of their non-competitive rates to the level of their competitive rates.

Suppose the line A-B-C to represent a railroad. The appellees and the appellant agree that in the absence of competition, the rates from A to C should be higher than the rates from A to B; because, the distance from A to C is greater than the distance from to A to B.

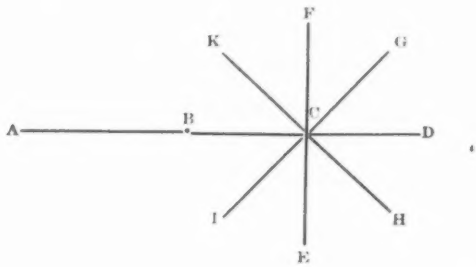
If C is a city, whose strategetical position is such as to enable it to command competitive rates, which are less than might reasonably be charged from A to C, in the absence of competition, the appellees contend that they have the right to accept the competitive rates prevailing at C, provided they yield something more than the additional cost of moving that traffic; and that the fact that they accept such rates at C, as competition at that place may force them to accept, furnishes no reason why they should be compelled to accept as low rates at B, where no competition whatever exists.

On the other hand, the appellant contends that notwithstanding competition at C may compel the appellees to accept less rates from A to C, than might reasonably be charged in the absence of competition, they shall not do so, unless they accept equally low rates at B, though there may be no competition whatever at that point.

According to the contention of the appellant, a railroad in accepting lower rates to a competitive point than might otherwise be reasonably charged, must do so under penalty of reducing all of its intermediate, non-competitive rates to the level of the competitive rates beyond.

As there is no competition at B, the appellees contend that rates from A to B should be constructed according to distance, *i. e.*, that the charge should be reasonable, considering the length of the haul. It may be, however, that the competitive rates from A to C are so low, and B may be located so near to C, that a merchant living at B would find it to his interest to pay rates which are equal to the competitive rates from A to C, added to the local rates from C to B, rather than pay the rates from A to B constructed upon a distance basis. By that plan, he would get precisely the same benefit of the competition which exists at C as though he were doing business at C; and he would only pay, in addition thereto, rates equal to reasonable local rates from C to B.

In other words, the merchant rather than pay the rates from A to B, constructed upon a distance basis, *would himself use a combination rate* by having his goods shipped from A to C, under the competitive rates, and from C back to B, under the local rates. A railroad owning the line from A to C, and knowing that a merchant at B can avail himself of a combination of rates such as I have just referred to, accepts rates, which are not higher than can be obtained by such a combination, and saves the merchant at B the trouble and delay of shipping his goods from A to C, and thence back to B. In other words, the railroad gives to the merchant at B, although it is a non-competitive point, all the benefit of the competition that exists at C; and instead of requiring him to ship his goods to C, and thence back to B, it delivers them to him direct at B; and at a rate less than the rate from A to B would be, if constructed upon a distance basis.



In the diagram first set forth in this section, I have supposed that the non-competitive point B is located between A, and the competitive point C. It is manifest, however, that the non-competitive point may be located beyond the competitive point C; as, for instance, at the point D, or E, or F, or G, or H, or I, or K. It is wholly immaterial whether the non-competitive point be located between A and C, or beyond C. The non-competitive point gets all that it is entitled to, when it is allowed the full benefit of the competition that exists at C, and is only required to pay, in addition to the competitive rates prevailing at C, rates equal to reasonably low local rates from C to destination.

In this case, the local rates from Atlanta or Opelika to the shorter distance points are reasonably low.

The appellees as well as the appellant agree that non-competitive points should have all the benefit of such competition as may exist at the nearest competitive point. The precise point of difference between the appellees and the appellant is, that the appellant contends that the non-competitive points shall have the same rates *as if they were located exactly where the competitive point is located;* while the appellees contend that the non-competitive points should pay in addition, rates equal to reasonably low local rates from the competitive point, to destination.

In case No. 69, the shorter distance points are certain non-

competitive stations on the Western & Atlantic Railroad between Chattanooga and Atlanta; and their complaint is that on freight from Cincinnati, Atlanta, which is a longer distance point, is charged less than they are.

In case No. 68, the shorter distance points are certain non-competitive stations on the Georgia Railroad between Augusta and Atlanta; and their complaint is that on freight from New York, Atlanta, which is a longer distance point, is charged less than they are.

In case No. 70, the shorter distance points are certain non-competitive stations on the Atlanta & West Point R. R. between Atlanta and Opelika; and their complaint is that on freights from New York, Opelika, which is a longer distance point, is charged less than they are.

It will be seen that the shorter distance points in all three of the cases are located between the point of shipment (A) and the competitive point (C), and, therefore, that their location corresponds with the non-competitive point (B) in both of the diagrams above set forth in this section.

In all three of the cases the appellees would be perfectly willing to construct their rates from Cincinnati or New York to the shorter distance points, according to distance; for such rates would be materially higher than those now charged.

But the competition at Atlanta and Opelika, taken in connection with the rates fixed by the Georgia Railroad Commission, compels the appellees to accept rates from Cincinnati and New York to the shorter distance points, which are materially lower than they would be if they were constructed according to distance. The appellees have been forced to give to the shorter distance points the full benefit of the competition which exists at

Atlanta and Opelika. But the shorter distance points are not willing to have their rates from Cincinnati and New York constructed according to distance, nor are they content with receiving the benefit of the competition which exists at Atlanta and Opelika. What they demand is, that they shall have precisely the same rates as if they were located exactly at Atlanta or Opelika; and they refuse to pay anything whatever in addition to the Atlanta or Opelika rates.

If it be held that railroads cannot accept rates which competition forces upon them at such points as Atlanta and Opelika, except at the peril of reducing their rates at intermediate non-competitive stations to the same level, its manifest tendency will be to deter railroad companies from engaging in competition; and it will have more effect toward stifling railroad competition, than any contract, combination or conspiracy denounced by the anti-trust Act of Congress.

In the cases at bar, the Court of Appeals said:

"Therefore, in fixing the rates to these intermediate points, the through rate to that competitive point, which, combined wih the local rate from the competitive point to the point of destination, will give the lowest through rate to the non-competitive point, controls. As the non-competitive point thus gets the benefit of the lowest rate to any of the neighboring competitive points; and as the carriage of the competitive traffic to the respective competitive points is remunerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the non-competitive points are subject to any undue or unreasonable prejudice or disadvantage by this scheme of rate making."

93 Fed. Rep., p. 92, I. C. C. vs. W. & A. R. R. Co. et al.

LXXXI.

The First Section Continued.

There were a number of combination rates in the Alabama Midland case, which the Commission declared to be illegal; but the Commission was reversed by the Circuit Court, by the Circuit Court of Appeals, and by this Court.

In that case, Montgomery was the competitive point, and Troy the non-competitive point.

1. On cotton shipped from Troy to New Orleans, there was a combination rate, equal to a rate made by adding the local rate from Troy to Montgomery, to the competitive rate from Montgomery to New Orleans.

2. On class goods shipped from Ohio River points to Troy, there was a combination rate, equal to a rate made by adding to the competitive rate from the Ohio River to Montgomery, the local rate from Montgomery to Troy. Those rates were made precisely like the rates in case No. 69 at bar are made. The combination rates in case No. 69 are made by adding to the competitive rates from Cincinnati to Chattanooga, the local rates from Chattanooga to the shorter distance points on the W. & A. R. R.

3. On class goods shipped from New York, over the Alabama Midland Railway to Troy, there was a combination rate, equal to a rate made by adding to the competitive rate from New York to Montgomery, the local rate from Montgomery back to Troy.

Those rates were made precisely like the rates in cases Nos. 68 and 70 at bar are made. The combination rates in case 68 are made by adding to the competitive rates from New York to Atlanta, the local rates from Atlanta back to certain shorter distance points on the Georgia Railroad; and in case No. 70 the

combination rates are made by adding to the competitive rates from New York to Opelika, the local rates from Opelika back to certain shorter distance points on the Atlanta and West Point Railroad.

4 I. C. Rep., p. 348, Board of Trade of Troy vs. Alabama Midland Ry. Co.

69 Fed. Rep., p. 227, I. C. C. vs. Alabama Midland Ry. Co.

74 Fed. Rep., p. 715, I. C. C. vs. Alabama Midland Ry. Co.

168 U. S., p. 144, I. C. C. vs. Alabama Midland Ry. Co.

LXXXII.

The First Section Continued.

There was a combination rate in the Behlmer case, which the Commission declared to be illegal; but the Commission was reversed by the Circuit Court, and by this Court.

In that case, Charleston was the competitive point, and Summerville the non-competitive point.

On hay, and other articles of interstate commerce, shipped from Memphis to Summerville, there was a combination rate, equal to a rate made by adding to the competitive rate from Memphis to Charleston, the local rate from Charleston back to Summerville.

The combination rate in that case was made precisely like the rates in cases Nos. 68 and 69, at bar.

175 U. S., 648-650, Louisville, etc., R. R. vs. Behlmer.

LXXXIII.

The First Section Continued.

In the Circuit Court, counsel for appellant referred to what is known as the "Social Circle Case," as holding that "combination rates" are unreasonable.

In the "Social Circle" case, it was held that where two or more roads join in making combination through rates on interstate traffic, such roads constitute but one "line;" and that such "line" is subject to the Act to Regulate Commerce, though one of the roads may be wholly within a single State. But it was not even intimated in that case, that a "combination rate" charged by such a line to a local station on one of the roads constituting the line, is unreasonable, merely because the delivering road is allowed its local rate as its proportion of the joint through rate.

162 U. S., pp. 184, 191, 192, C., N. O. & T. P. Ry. vs. I. C. C.

175 U. S., pp. 662, 672, 673, Louisville, etc., R. R. Co. vs. Behlmer.

The Social Circle case was cited by counsel for the Commission in his argument in this Court in the Alabama Midland case; and in the same argument he contended that a combination rate made up in part of a local rate is unreasonable.

See Hon. L. A. Shaver's Brief, p. 39, in I. C. C. vs. Ala. Midland Ry. Co., No. 563, Oct. Term, 1896.

The Social Circle case was also cited by counsel for Behlmer in his argument in this Court in the Behlmer case; and in the same argument he also contended that a combination rate made up in part of a local rate is unreasonable, and unjust.

See Hon. C. B. Northrop's Brief, p. 87, in Louisville, etc., R. R. Co. vs. Behlmer, No. 244, Oct. Term, 1898.

If this Court had regarded the Social Circle case as deciding that a combination rate which is made up in part of a local rate is unreasonable, its decisions in the Alabama Midland case, and the Behlmer case, would have been just the reverse of what they were.

LXXXIV.

The First Section Continued.

Counsel for appellant, in the court below, referred to the Augusta Southern Railroad case, 74 Fed. Rep., p. 527.

The legality of "combination rates" was not discussed by the Court in that case. The Wrightsville & Tennille Railroad, which was one of the roads involved in that case, was not the delivering carrier. It was an intermediate carrier, and its service was, in the strictest sense, "through" service. It received the cars at one end of its line, and surrendered them at the other end; without incurring any of the expense or delay incident to delivery at local stations.

My information is that the rate discussed by the Court in that case was on phosphate from Charleston, via Augusta, and Tennille, to Oconee River landings.

The total rate was.....		$4 20
It was divided as follows:		
To the roads running from Charleston to Tennille, 326 miles (5½ mills per mile).....	$1 80	
To the Wrightsville & Tennille Railroad, 36 miles (22 mills per mile).....	80	
To the boats on the Oconee River.....	1 60	—$4 20
The proportion of the Wrightsville & Tennille Railroad, added to that of the boats, amounted to	2 40	

The Wrightsville & Tennille Railroad had for a long period of time joined with the Augusta Southern Railroad, as well as with the Central Railroad, in making through rates on phosphate; and it had accepted from each of them 80 cents as its reasonable proportion of the through rate.

Its local rate from Wrightsville to Tennille was $1.16. It withdrew from its connection with the Augusta Southern Railroad, and proposed to charge the Augusta Southern its local rate of $1.16, which, added to the boat's proportion of $1.60, made the total proportion from Tennille to the Oconee River landings $2.76, instead of $2.40, as it had previously been. The Court held that as $2.40 had been previously accepted from the Augusta Southern Railroad as reasonable, and as it was still accepted from the Central Railroad as reasonable, the presumption was that the increased rate of $2.76 was unreasonable as a charge against the Augusta Southern Railroad—especially as the former charge of $2.40 was continued to be accepted from the Central Railroad.

The question in that case was as to the right of a railroad to discriminate between two of its connections as to the proportion which it would demand out of a through rate. *There was no question as to whether the through rate was reasonable as between the through line and a shipper.*

In the case at bar, counsel contends that the Western & Atlantic Railroad, the Georgia Railroad, and the Atlanta & West Point Railroad, respectively, shall be compelled to accept substantially the same rate per ton per mile on their short hauls from Chattanooga, Augusta, and Atlanta, respectively, to their respective local stations, as competition forces the through line to accept on the long haul from Cincinnati and New York, respectively, to Chattanooga and Atlanta, respectively; but in the Augusta Southern case, the Court allowed the Wrightsville &

Tennille Railroad to continue to charge its former rate of 80 cents for 36 miles, which rate was four times as much per ton per mile as was charged by the connecting roads from Charleston to Tennille; and the only effect of the order in that case was to prohibit the Wrightsville & Tennille Railroad from increasing its proportion from 80 cents to $1.16, as against the Augusta Southern Railroad, while it continued to accept 80 cents from the Central Railroad.

The "Augusta Southern" case was cited by counsel for the Commission, in his argument in the Court of Appeals in the cases at bar, as holding that combination rates are unreasonable and unlawful. Judge Pardee participated in the decision of the "Augusta Southern" case, and of course was familiar with what was held in that case; and that he did not consider the "Augusta Southern" case as holding that combination rates are unreasonable, is evident from his concurring in the opinion in the cases at bar.

LXXXV.

The First Section Continued.

In the case of I. C. C. vs. E. T., V. & G. Ry. Co. et al., Judge Severens said:

"Nevertheless, a reference to the Memphis rate is of value in determining whether the rates to Chattanooga are reasonable rates, it appearing that, though the distance is nearly one third greater than to Chattanooga from the East, rates are accepted for the Memphis business considerably less than those at Chattanooga."

85 Fed. Rep., pp. 111, 112.

In that case, Memphis was one of the longer distance points, and Chattanooga was the shorter distance point. The Commis-

sion held that as there was water competition at Memphis, which created dissimilar circumstances and conditions, the lower rates to Memphis were not violative of the fourth section, and refused relief to Chattanooga, so far as Memphis was concerned. According to Judge Severens, however, though the Commission declined to grant relief under the fourth section, it could have used the Memphis rates as presumptive evidence that the shorter distance rates to Chattanooga are unreasonable, and could have granted relief to Chattanooga under the first section.

In the case of A. T. & S. F. R. R. vs. D. & N. O. R. R., 110 U. S., p. 684, this Court refused to use through rates as presumptive evidence that local rates were unreasonably high.

If Judge Severens is right, there is no use for either the second, third or fourth sections of the Act; because every long and short haul case can be disposed of under the first section. If a disparity of rates constitutes an unjust discrimination, then, according to Judge Severens, the higher rate is unreasonable; and dispensing with the second section, relief may be given under the first section. So, if a disparity of rates constitutes an undue prejudice, then, according to Judge Severens, the higher rate is unreasonable; and dispensing with the third section, relief may be given under the first section. And so, if a greater charge be made for a shorter than for a longer distance, then, according to Judge Severens, the shorter distance rate is unreasonable; and dispensing with the fourth section, relief can be given under the first section.

But according to Mr. Justice Brown:

"A charge may be perfectly reasonable under section 1, and yet may create an unjust discrimination, or an unreasonable preference, under sections 2 and 3." And he might have added, with equal propriety, may create a greater charge for a shorter than for a longer distance, under such circumstances as to violate section 4.

According to Mr. Justice Brown, the first section of the Act has a scope of its own, and covers a ground entirely distinct from that covered by either section 2 or section 3; and, I may add, entirely distinct from that covered by section 4.

Again, Judge Severens said:

"I think the question of the justness and reasonableness of rates under the first section is colored by the other provisions of the law and by the general policy of the whole enactment, which is to effect the equality of charges."

85 Fed. Rep., p. 114.

In Section XLVI. of this argument I have shown that neither the common law, nor the Act to Regulate Commerce, requires "equality of charges," except where the services are similar; and therefore I submit that Judge Severens is in error in referring to "the general policy" of the Act as aiming at the "equality of charges." I also submit that he is in error in holding that "the first section is colored by the other provisions of the law;" for, as stated above, Mr. Justice Brown holds that the first section has a scope of its own, which is distinct from that of any of the other provisions of the law. Again, in the case of I. C. C. vs. E. T., V. & G. Ry. Co. et al., Judge Severens said:

"The question whether the rates are just and reasonable in themselves is in some measure a relative one, that is to say, it may be tested by a comparison of the particular rates with those accepted elsewhere for a *similar* service," etc.

85 Fed. Rep., p. 114.

I agree to that proposition, provided due importance be given to the word "similar."

Again Judge Severens says:

"It seems to me clear, that the charges accepted for the longer

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haul may be referred to for the purpose of considering the reasonableness of the charges made for the shorter haul."

85 Fed. Rep., p. 114.

I agree to that proposition also, provided the service performed in the case of the longer haul be *"similar"* to the service performed in the case of the shorter haul. It is difficult, however, to imagine a case where a carrier would charge less for a long than a short haul, unless the circumstances and conditions of the two hauls were substantially *dis*similar. Again: in the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens said:

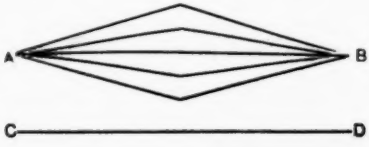
" Such comparisons are applied to every other kind of business, and the fact that there may be competition in such business would not be a controlling consideration, *for the presumption would always be* that the compensation charged for the service or thing is sufficient to be *reasonable."*

85 Fed. Rep., p. 115.

Again, he said:

" If, as I gather from the testimony, the through rates to Nashville afford a *fair* profit to the carriers, whether the Northern trunk lines or the respondents (*and it is reasonable to suppose they would not engage in the business without it*), there is substantial ground for contending that the same charge for carrying freight from the East to Chattanooga would afford a reasonable profit, and would therefore be a reasonable charge."

85 Fed. Rep., p. 115.



I agree that if the competition from A to B in the above dia-

gram be substantially similar to the competition from C to D, then the rates charged from A to B may fairly be compared with the rates charged from C to D. But if there be severe competition existing from A to B, and no competition existing from C to D, then I deny that any fair comparison can be made between the rates from A to B and those from C to D.

Suppose it should be shown that merchants are constantly in the habit of selling salt, domestics and other staple articles at one per cent. profit. It would be perfectly fair to compare the rates charged by one merchant upon *those* articles with the rates charged by another merchant *in the same town* upon the *same articles;* for it would be right to assume that if, for any reason, one merchant could afford to sell those articles at a certain profit, another merchant in the same town could afford to sell at the same profit; and the fact that the profits of both merchants on those articles were controlled by competition would not alter the case. But would it be fair to compare the profit which those merchants accepted on salt, domestics, etc., with their profit on fancy imported articles, and foreign dress goods? *In a word, it is fair to compare competitive rates with competitive rates; and it is fair to compare non-competitive rates with non-competitive rates; but it is not fair to compare competitive rates with non-competitive rates.*

When Judge Severens says that:

"The presumption would always be that the compensation charged for the service or thing is sufficient to be *reasonable;*" and when he says that the presumption is that through rates to longer distance points "afford a *fair* profit" or the carriers would not engage in the business; the correctness of his proposition depends entirely upon the meaning to be given to the words "reasonable" and "fair."

It may be said that a profit of one per cent. on salt, domestics

and other staple articles is a "reasonable" and "fair" profit on those articles, or the merchants "would not engage in the business" And the profit *is* in fact "fair" and "reasonable;" provided the merchant be allowed to charge higher profits upon fancy imported articles, dress goods, etc. A merchant is compelled to carry certain staple articles in stock in order to draw customers for his higher priced goods; and he can "fairly" and "reasonably" accept extremely low rates of profit upon his staple goods, rather than deplete his stock of such articles, and thereby drive away his custom. But if by the words "fair" and "reasonable," Judge Severens means that because a merchant accepts one per cent. profit upon staple articles, the presumption is that it is a fair and reasonable profit to be charged *upon all other articles sold by him;* and that he ought not to be allowed to exceed that profit upon any other article; then I respectfully dissent from his proposition. Any such rule of law administered in a case where a merchant was suing for articles sold and delivered, and no price had been previously stipulated, would destroy the mercantile business of this country. No court would think of charging a jury in a suit brought by a merchant to recover for the value of an imported lace shawl sold by him, that the jurors must, in ascertaining its value, restrict the merchant to the same rate of profit upon the shawl as that which he accepts on domestics, and other staple articles. The proposition of Judge Severens, referred to above, is plausible, and apparently logical, but in reality sophistical.

It may be put in syllogistic form, as follows:

1. Rates charged by a carrier to a longer distance point must be ***reasonably high.***

2. The rates charged by the appellees to the shorter distance points involved in these cases are higher than the rates charged by them to the longer distance points.

3. Therefore, the rates charged by them to the shorter distance points are *un*reasonably high.

The fault in the syllogism is to be found in the major premise. And it consists in stating a fact as being true under all circumstances, which, though it may be true under certain circumstances, is not true under other circumstances, and is not true under the circumstances of the particular case, in which the syllogism is invoked.

A similarly faulty syllogism would be the following:

1. Men are black.
2. George Washington was a man.
3. Therefore George Washington was black.

If a railroad has no competition to contend with, its own interests will induce it to charge according to distance.

In that case, rates charged by it to a longer distance point may properly be presumed to be reasonably high; and in that case, the major premise of the Commission's syllogism would be true.

But where severe competition exists at the longer distance point, whether the competition be between market and market, or between product and product, or between carrier and carrier, the presumption instead of being that the rates to that point are reasonably *high*, is that they are reasonably, or perhaps *un*reasonably *low*.

In the case of Smyth et al. vs. Ames et al., this Court quoted the following from Mr. Justice Brewer:

"It must be remembered that these roads are competing roads; *that competition tends to a reduction of rates*—sometimes as the history of the country has shown, *below that which affords any remuneration to those who own the property.*"

Smyth et al. vs. Ames et al., 169 U. S., p. 542.

In its Eleventh Annual Report, the Commission says:

"Rates to competing and distributing centers are not for the most part unreasonably high; they are frequently *quite low.*"

11 Ann. Rep., I. C. C. (1897), p. 14.

LXXXVI.

The First Section Continued.

If the low rates which prevail at competitive points are to be used as a standard for fixing the rates to non-competitive points, the rates on low class traffic will have to be used as a standard for fixing rates on high class traffic.

To illustrate my meaning: By reference to the Report and Opinion of the Commission in this case (Trans. No. 69, p. 23, right col.) it will be seen that the first-class rate from Cincinnati to Atlanta is $1.07 per hundred pounds, and the first-class rate from Cincinnati to Marietta is $1.27 per hundred pounds; showing that the first-class rate to Marietta exceeds the rate to Atlanta by 20 cents per hundred pounds; and 20 cents per hundred pounds is the greatest difference that exists in favor of Atlanta upon any of the classes of freight.

It will be seen from said Report and Opinion (Trans. No. 69, p. 23, right col.) that the rate from Cincinnati to Atlanta on Class D is 24 cents per hundred pounds, while the rate from Cincinnati to Atlanta on Class 1, is $1.07 per hundred pounds; making a difference in rates of 83 cents per hundred pounds in favor of Class D, as against Class 1, from Cincinnati to Atlanta.

Now, if the low competitive rates from Cincinnati to Atlanta are to be used as a standard for fixing rates to the non-competitive stations on the W. & A. Railroad, why is it that the low rates to Atlanta on Class D are not to be used as a standard for fixing the rates to Atlanta on the remainder of the thirteen

classes of freight? Why cannot the argument be made, that if railroad companies have, for a long series of years, carried traffic known as Class D from Cincinnati to Atlanta for 24 cents per hundred pounds, the presumption is that it has afforded them "a fair profit," or "they would not engage in the business;" and if 24 cents per hundred pounds affords "a fair profit" for carrying Class D from Cincinnati to Atlanta, the higher rates charged by them from Cincinnati to Atlanta upon the remainder of the thirteen classes of freight must be unreasonably high? And yet, if any one should seriously contend that the carriers of this country ought to be compelled to charge on the lower classes of traffic as high rates as are charged on the higher classes, the contention would be regarded as preposterous.

It is certain, however, that precisely the same fact which compels carriers to accept exceedingly low rates to *all* points on the *lower* classes of traffic, compels them to accept exceedingly low rates to *competitive* points on *all* classes of traffic; and the sole compelling fact in both cases is competition. The reason why low class traffic can only pay very low rates is because of competition between *product and product.* Wheat shipped from the Northwest to Atlanta comes into competition with wheat grown in Kentucky, Tennessee and Georgia; and therefore wheat from the Northwest must be carried at a sufficiently low rate to enable it to compete in Atlanta with wheat that is grown nearer to Atlanta. Again, if the rate charged upon wheat, added to its cost at the place of production, makes the selling price of wheat in Atlanta too high, as compared with corn, rye, etc., the amount of wheat consumed will diminish, and the deficit will be made up from corn, rye or other grain. In a word, the only reason why exceedingly low rates are charged upon the *lower classes* of traffic is that *competition* between *product and product* compels it; and the only reason why rates to Atlanta on *all the classes* are less than rates to the local stations on the W. & A. R. R., is that competition between railroad and railroad, and between

market and market, which exists at Atlanta, but does not exist at the local stations, compels it. If competition is to have the effect to reduce local rates to the level of competitive rates, it should also have the effect to reduce the rates on high class traffic to the level of low class rates.

LXXXVII.

The First Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens says:

"But it is to be remembered that the railroad business of the country is conducted by able men, animated, as it is right to suppose, with the desire to promote the interests of those whom they serve. Further to promote the efficiency of their work, the officers of the various companies have their associations for the purpose of comparing, studying and adjusting the rates of traffic on their several lines. *In the absence of the other party, they have everything their own way.* It would be expecting something not encountered or expected in other branches of business if we anticipated that they would assume a judicial attitude toward those with whom their business is to be done."

85 Fed. Rep., p. 112.

Judge Severens is correct in saying that railroad traffic managers are animated with the desire to promote the interests of those whom they serve. But experience has taught them that the most effective way to promote those interests is to promote the interests of the patrons of their roads. This is not attributing to railroad officials any charitable or benevolent motive. On the contrary, it is conceding that they are intelligently selfish.

The error of Judge Severens consists in the statement that

railroad traffic managers in studying and adjusting the rates of traffic on their several lines act "in the absence of the other party," and that "they have everything their own way." The error is quite popular, and it grows out of a want of familiarity with the practical method of rate-making in this country. *At the present day, it cannot be said that railroad traffic managers make their rates at all.*

So far as rates to and from *competitive* points are concerned, they are fixed inexorably, and absolutely, by competition. A traffic manager has nothing to do but to ascertain the rates which his rivals are offering to accept, and adopt, or closely approximate those rates, or abandon the competitive traffic.

As to rates to and from local stations, a railroad traffic manager in Georgia, and in many of the other States, is not only restricted by State railroad commissioners, but also by competition between product and product, and between market and market; which kinds of competition have a controlling influence upon the rates that can be charged to and from even the most strictly local stations, on a road. To illustrate: Cotton is raised on the lines of the W. & A. R. R.; the Georgia R. R.; and the A. & W. P. R. R.; and it is shipped from many of the local stations on those roads. But that cotton is raised and shipped in competition with cotton raised upon other railroads in Georgia; and in competition with cotton raised upon railroads in other States. The traffic managers of the W. & A. R. R., the Georgia R. R., and the A. & W. P. R. R. must accept such rates on cotton from their local stations as will enable that cotton to be carried and sold in the markets of the world in competition with cotton raised upon the lines of other railroads in Georgia, and in other States, or the cotton cannot be moved at all. In that event the W. & A. R. R., the Georgia R. R., and the A. & W. P. R. R., will lose the revenue that they might otherwise realize from the transportation of cotton from their local stations.

Again: If the cost of producing cotton, added to a certain rate charged for transportation, exceeds the price which can be obtained for cotton in the market, the cotton will not move from the local stations; and said railroads will lose the revenue which they might otherwise realize from its transportation. It is necessary, therefore, that the traffic manager acquaint himself, not only with the rates which other railroads are accepting for the transportation of cotton for similar distances, but also with the cost of producing cotton, and with the price at which it is selling; and this he cannot do without full consultation with the farmer who raises the cotton, and the merchant who buys it. The same is equally true of corn, wheat, and other grain, of live stock, and, in fact, of everything produced along the line of a railroad and shipped from its local stations. Whenever any of those products are offered for shipment at a local station, it is offered with full knowledge that its transportation must be conducted in competition with the transportation by other railroads of similar products, destined to common or competing markets; and such competition is as controlling, though not in the same degree, as that which exists at those cities where numerous rival lines of railroad intersect.

The Commission, in speaking of classifications made by railroad associations, says:

" But in these associations, when in session for the making of rates, each railroad official has, to some extent, had the district which was served by his road behind him; he has felt the pressure of the interests there, and contended for them as against the interests in classification represented by others, not only because it was desirable that the roads should favor the policy its patrons favored, but also *because the same policy was likely to be beneficial to both.*

" The result necessarily is that a classification made by a railroad association represents a series of compromises, *to which not*

only the railroads are parties, but in a certain sense business interests and sections of country also; these in many cases being admitted by their representatives to the consultations upon a subject so vitally concerning their interests, and allowed to present their views."

1 Ann. Rep., I. C. C. (1887), p. 31.

In an extract from Senate Report No. 1394, Finance Committee, second session, Fifty-third Congress, published by the Government under the title "Wholesale Prices, Wages and Transportation," it is said that:

"These are the general rules under which classifications are constructed, and while to a large extent controlling, classifications are, notwithstanding, in a great measure a series of compromises, *the participants of which are not alone the railroads, but also the shippers and representatives of business interests throughout the country, the latter being afforded ample opportunity to join with the railroads in the discussion as to the proper classification of articles of shipment affecting their interests.*"

Wholesale Prices, Wages and Transportation, p. 404.

Judge Severens is therefore in error, when he states that traffic officers in "studying and adjusting the rates of traffic on their several lines," act "in the absence of the other party and have everything their own way."

LXXXVIII.

The First Section Continued.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens says:

"If railway carriers engage in a competitive struggle for business at a place where they meet and underbid each other, or other

carriers, to a point which is not in itself remunerative, can they turn back on the line, and taking advantage of the conditions existing at other localities, arising either from the fact that there is no opportunity for competition, or from the fact that by concert of the carriers there is none, charge such rates for the shorter haul as shall make good their lack of profit in competitive business, and even up the profits on their whole business to the point they set before themselves as reasonable? To the proposition thus roundly stated, no doubt counsel for the carriers would say that they could not contend for it, and yet this is the result reached by the not very indirect steps of the argument."

85 Fed. Rep., p. 115.

I respectfully deny that the argument of "counsel for the carriers" either directly or indirectly leads to any such proposition as the Judge stated so "roundly."

In Section XLIV. of this argument, I stated what I regarded as the reasonable limitations imposed upon carriers in exercising the privilege of taking into consideration competition as one of the circumstances and conditions affecting transportation; and one of the limitations conceded by me was that the rates accepted by carriers on traffic to the longer distance competitive points *must yield some profit* (though it may be very small) over the additional cost of the movement of that traffic. The limitation is directly opposed to the idea that carriers may "engage in a competitive struggle" . . . "to a *point which is not in itself remunerative.*" If the rates accepted to Atlanta and Opelika, the longer distance competitive points, yield *any* profit over *the additional cost of the movement of that traffic,* they are "remunerative" to some extent, though the remuneration may be very slight.

Another limitation conceded by me in Section XLIV. of this argument is that the rates charged by carriers to the shorter distance points must not be unjust or unreasonable, within the

purview of the first section of the Act. Now, if those rates be just and reasonable, within the purview of that section, how can it be truthfully said that the appellee carriers "turn back on the line" and "take advantage" of the conditions existing at such points? If the rates to the shorter distance points be in fact just and reasonable, the carriers, in charging them, are in no sense "taking advantage" of the persons who pay them. If the rates charged by the carriers to the longer distance competitive points are remunerative to any extent, however small it may be, there is no "loss" sustained by the carriers in the transportation of the longer distance traffic; and therefore there is no occasion for them to "even up," by increasing their shorter distance rates.

If Judge Severens means that railroads must charge at competitive points, the same rate of profit as is charged at non-competitive points, then they must abandon competitive traffic altogether. If he means that railroads must accept upon non-competitive traffic whatever rate of profit they may be forced to accept upon competitive traffic, then the Southern railroads must go into bankruptcy; because they can no more afford to carry all of their traffic at the low rate of profit which they are forced to accept at competitive points, than a merchant can afford to sell his entire line of goods at the same rate of profit which he is forced to accept upon certain staple articles.

LXXXIX.

The First Section Continued.

In Sections LXXXV. and LXXXVI. of this argument, I commented upon the proposition contended for by the appellant, to the effect that the presumption is that the rates charged by carriers to longer distance points yield a reasonable profit, and

therefore that higher rates charged to shorter distance points must yield an unreasonably high profit.

Counsel for the appellant, in his argument in the court below, contended for another proposition, which is entirely different from, and inconsistent with, the proposition upon which I commented in those sections.

The other proposition is:

That the rates to Atlanta and Opelika are unreasonably low, because they do not pay operating expenses, and, in addition, *interest on bonds, other fixed charges, and dividends;* and therefore that part of these burdens which should be borne by Atlanta and Opelika traffic are placed upon traffic to the shorter distance non-competitive or local stations,—*thus rendering the latter's rates excessive in themselves.*

It is true that the rates to Atlanta and Opelika do not pay their full proportion of "operating expenses;" that they do not pay anything toward "interest upon bonds," and other "fixed charges;" and, of course, it is true, that they do not pay anything toward reasonable "dividends."

It is also true that the Atlanta traffic ought to pay, provided it could be compelled to do so, its full proportion not only of "operating expenses," but also of "interest," other "fixed charges," and "dividends."

It is also true that to the extent that the Atlanta and Opelika traffic fail to pay their full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," those burdens have to be placed upon traffic to the shorter distance non-competitive stations; *or they have to be borne by the stockholders of the companies.* And such burdens upon stockholders have been so great in Southern territory as to cause the utter bankruptcy of many railroad companies. I have shown in Section LXXXVII. that there are many reasons why the rates to the

shorter distance non-competitive stations cannot be increased to such an extent as to render them "excessive in themselves."

If then, the shorter distance rates are not "excessive in themselves," the question arises whether the Atlanta and Opelika rates are illegal, merely because competition at those points has reduced them so low, that while they pay something more than "the additional cost of movement" of the Atlanta and Opelika traffic, they cannot be made high enough to pay their fair proportion of "operating expenses," "interest" on bonds, other "fixed charges," and "dividends."

The present proposition for which counsel contends can be put in syllogistic form, as follows:

1. Rates charged to longer distance competitive points do *not* yield reasonable compensation for the service performed by the carrier.

2. The loss sustained by the carrier on traffic to longer distance competitive points is made up by increasing the rates to shorter distance points.

3. Therefore carriers ought not to be allowed to charge less for a longer, than for a shorter distance, over the same line, in the same direction, etc.

The first fault in this syllogism is to be found in the major premise; and it is the fault of indefiniteness. How are we to decide what is a *"reasonable"* compensation for transportation to a *competitive* point?

My contention is, that if *competitive* rates will pay anything over and above *"the additional cost of movement"* of the competitive traffic, it is right and *reasonable* that they be accepted by the carrier, rather than abandon the competitive traffic.

On the other hand, counsel for complainant contends that

competitive rates ought to be sufficient to pay not only the *"additional cost of the movement,"* of the competitive traffic, but also the full proportion of that traffic toward "operating expenses," "interest," and other "fixed charges," and "dividends."

Counsel's proposed method of rate construction is correct in theory; and it would be followed by every railroad traffic manager in the country, if it were practicable to do so. But the utter impracticability of constructing rates upon the theory contended for by counsel was demonstrated by the Commission itself, in 1887 in Re Southern Railway & Steamship Association (sometimes cited as in Re Louisville & Nashville Railroad Company). In that case, the Commission said:

"This distinction between *the cost of movement* and *the fixed charges* often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculation for business to meet the whole cost of operation in reliance upon such traffic as was then apparent or probable. The *fixed charges* of the road may, for purposes of illustration, be assumed to equal one-half of the whole, *the cost of movement* of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin for profit, and were so laid that all traffic would contribute toward both *fixed charges* and *cost of movement.* But now comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little if anything more than half what is paid by other traffic. But taking it will not increase perceptibly *the fixed charges* of the road, because those are made up of the items that must be paid whether the traffic is large or small. What is added to the cost by taking it *is simply the expense of its own handling and movement;* and upon the supposition made, there might perhaps be gain to the road instead of loss, in taking it at anything above half the rates which are levied upon other traffic corresponding to its classifi-

cation. *It might, therefore, be carried at such rates without* wrong to any one."

1 Interstate Commerce Rep., p. 284, right col., In Re Southern Ry. & S. S. Association.

What is said by the Commission in reference to the lumber trade, is equally applicable to all the lower kinds of freight, such as iron ore, stone, sand, brick, cement, pig iron, etc. If the courts once hold that each and every kind of traffic must be charged such rates as will pay not only the "additional expense incurred" by the carrier in the transportation of that particular kind, but also the full proportion which such traffic ought to contribute toward all the "operating expenses," "interest," other "fixed charges," and "dividends," then *the courts will put an absolute embargo upon more than half of the tonnage now carried by the railroads of this country.*

The Commission in its First Annual Report to Congress said:

"It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good, the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose bulk or weight was large as compared with their value. On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added."

See First Annual Report Interstate Commerce Commission.

What is said by the Commission with reference to the impracticability of apportioning the charges for the transportation of different articles of freight among such articles by reference to the cost of transporting them, severally, is equally applicable to the theory that the charges for the transportation of competitive and non-competitive freight ought to be apportioned between them by reference to the cost of transporting them, severally. The reason why low-grade traffic cannot be made to pay in proportion to the cost of its transportation, is, as the Commission properly states, because the charge for carriage would be greater than it could bear. And the reason why *competitive* traffic cannot be made to pay in proportion to the cost of transporting it, is because the charge for carriage upon that basis by the longer line would ordinarily be greater than by the shorter line; the longer line would, therefore, be driven out of competition; the shorter line would secure a monopoly, and all competition would be destroyed.

The second fault in the syllogism is to be found in the minor premise. In that premise it is erroneously assumed that a *loss* is sustained by the appellees on the Atlanta and Opelika traffic. But if the Atlanta and Opelika rates pay anything over and above the "additional cost of movement," so far from there being any *loss* to the appellees on the Atlanta and Opelika traffic, there is a "margin of *profit*" *in carrying that traffic.* In other words, *there is no loss at all.*

The real ground of counsel's present objection is, that the margin of profit is not as great as it should be; and the answer to the objection is, that the profit, however small it may be, which the appellees may derive from the Atlanta and Opelika traffic, enables it to improve and increase its facilities for handling the shorter distance traffic, as well as the other traffic on its main line.

The third and greatest fault in said syllogism is to be found

in the conclusion which is sought to be drawn from the major and minor premises.

If it be true that rates charged to longer distance competitive points do not yield proper compensation; and if it be true that their failure to do so causes a loss to the carrier, it is manifest that if the rates to the shorter distance points be reduced to the same as the rates to the longer distance points, *the loss to the carrier will be increased, instead of being diminished.* In other words, if the Courts compel carriers in the Southern territory to accept to their non-competitive stations rates as low as those which competition compels them to accept to longer distance competitive points, the result must be a disastrous loss of revenue to the Southern railway system.

In the cases at bar, the following language was used by the Court of Appeals:

"There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying the competitive traffic, and that remuneration therefor which competitive conditions will allow the carrier to receive. The full measure of reasonable remuneration to the appellees for the carriage of competitive freight to Atlanta would require a rate sufficient to pay not only the additional cost of moving the competitive traffic, but also that proportion of operating expenses, fixed charges, and reasonable profit to the owners of the carrier lines which the tonnage of the competitive traffic bears to the total freight tonnage of the carrier. And that rate would, doubtless, be applied and enforced if the circumstances and conditions permitted it to be done. But as no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances and conditions, it is manifest that it cannot be applied to traffic that is subject to severe competitive conditions."

I. C. C. vs. W. & A. R. R. Co. et al., 93 Fed. Rep., p. 90.

XC.

The First Section Continued.

Suppose it be conceded "that the Atlanta and Opelika rates are unreasonably low," in the sense that they do not pay, in addition to "cost of movement," their full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," how is it to be remedied except by stifling the competition, which has reduced those rates to their present level?

If the railroads at Atlanta and Opelika were to agree to cease their competition at those points, the Atlanta and Opelika rates would, in all probability, become higher than the shorter distance rates; but would such an agreement be lawful?

The fifth section of the Act to Regulate Commerce expressly prohibits every contract, agreement or combination for pooling; and pooling was prohibited because it was supposed to have a tendency to stifle competition.

In the case of Ex Parte Koehler, Judge Deady said:

"The places between which competition in transportation exists between water craft and railways, *or even the latter*, always will, and must, send and receive freight at lower rates than others not so favored."

31 Fed. Rep., p. 321, Ex Parte Koehler.

Now if it be true that places between which competition in transportation exists always will, and must, send and receive freight at lower rates than others not so favored, it is impossible to prevent such competitive rates from becoming so low, that in many instances, while they may pay more than the "additional cost of movement," they will not pay anything toward "interest," other "fixed charges," and "dividends,"—unless the car-

riers enter into a contract, combination or conspiracy to limit or stifle the competition,—a thing which they are forbidden by law to do.

XCI.

The First Section Continued.

Suppose it be conceded that the Atlanta rates are "unreasonably low," in the sense that they do not pay, in addition to "cost of movement," their full proportion of "operating expenses," "interest," other "fixed charges," and "dividends," what provision of law is violated by accepting them?

The first section of the Act to Regulate Commerce provides that all charges, etc., "shall be reasonable and just." If the word "reasonable" had been construed to mean reasonably high, as well as reasonably low, then it would have been unlawful to accept rates which are "unreasonably low." The Commission, however, has held that the word "reasonable," as used in the first section in reference to rates, means reasonably low, but not reasonably high; and that the Commission has no power to order competitive rates to be advanced, even where they are so low "that persistence in making them would be ruinous."

In construing the word "reasonable," as used in the first section, the Commission said:

"There is consequently no little force in the claim made by respondent that charges are not reasonable and just, when they are so low as to be unremunerative to the carrier—so low that its action in continuing to make them would lead directly to bankruptcy. Possibly if the statute were to be interpreted without any aid from its history, and with no other knowledge of its purposes, aims and ends than such as may be derived from its provisions, a holding that a rate unreasonably low was forbidden

might be justified, or at least might be urged upon plausible argument.

But every statute is to be read in the light of its history and of the evils it was intended to redress."

After discussing the history of the statute and its purposes, the Commission said:

"If such was the primary purpose of the statute, as unquestionably it was, then the proper meaning of the term "just and reasonable," as employed in it, is apparent. They were employed to establish a *maximum* limitation for the protection of the public, *not a minimum limitation* for the protection of reckless carriers against their own action."

2 I. C. Rep., pp. 146, 147, In Re C., St. P. & K. C. R. Co.

The fact, therefore, that the Atlanta and Opelika rates may be "unreasonably low in themselves," in the sense above referred to, constitutes no violation of the first section of the Act; and it constitutes no violation of the third or fourth sections, unless it can also be shown that the shorter distance rates are "unreasonably *high*, in themselves."

I have herein shown that the shorter distance rates are not unreasonably high; but on the contrary are unreasonably low.

XCII.

The First Section Continued.

It is stated by the Commission that the railroad classifications now in use in this country embrace from five thousand to seven thousand items.

11 Ann. Rep., I. C. C. (1897), p. 66.

The classification which is used by the appellees divides those five thousand or seven thousand items into thirteen classes, and designates them as classes 1, 2, 3, 4, 5, 6, A, B, C, D, E, F, H.

The rate on class 1 is more than four times as much, per hundred pounds, as the rate on class D, notwithstanding both of those classes of freight may be carried for the same distance, over the same railroad, in the same train, and even in the same car.

If it be held that a rate is unlawful, because it is unreasonably *low*, in the sense that it fails to pay "interest," other "fixed charges," and "dividends," it must be held that a rate is unlawful, as being unreasonably *high*, because it pays more than "interest," other "fixed charges," and "dividends."

If the rate on class 1 pays more than "cost of movement," "interest," other "fixed charges," and "dividends," I suppose it is to be held to be unlawful, because it is unreasonably *high*. But if the rate on said class 1 pays no more than "cost of movement," "interest," other "fixed charges," and "dividends," it is manifest that the rate on class D, which is less than one-fourth of the rate on class 1, must fall very far short of paying "interest," other "fixed charges," and "dividends," in addition to the "cost of movement," and I suppose that it must be held to be unlawful, because it is unreasonably *low*.

Are we to assume that each and every rate is unlawful because it pays either more or less than the cost of movement, interest, other fixed charges, and dividends?

Class 1 may embrace dry goods; while class D may embrace grain. In fixing the rates upon dry goods, and grain, respectively, no consideration was given to the question as to whether the rates either upon dry goods, or grain, paid more or less than the "cost of movement," "interest," other "fixed charges," and "dividends." The traffic managers had sufficient intelli-

gence to know that it is an utter impossibility to ascertain exactly what any particular rate pays; and therefore, instead of trying to construct a tariff upon an impracticable and theoretical basis, they undertook to construct one upon a practicable, common sense, commercial basis. They knew that it does not cost a railroad company materially more to carry one hundred pounds of dry goods, than it costs to carry one hundred pounds of grain, a given distance. They knew that grain could not be moved at all, if it were charged such rates per hundred pounds, as would be perfectly fair and reasonable for the transportation of dry goods an equal distance; therefore, without regard to the element of cost, they fixed the rate upon grain at less than one-fourth of the rate which they fixed upon dry goods. They knew that they can afford to carry grain at a rate which may fall short of paying the "cost of movement," together with "interest," "fixed charges" and "dividends;" provided they can charge upon dry goods a rate which may pay something more than the "cost of movement," together with "interest," other "fixed charges" and "dividends." If the farmer's grain be carried, at less than cost, he can very well afford to pay something more than cost, for the transportation of such dry goods as may be used by himself and his family.

All Freight Tariffs are based upon commercial considerations,—without attempting to ascertain or consider the relative cost of moving the various articles assigned to the different classes.

I have heretofore quoted the following from the First Annual Report of the Interstate Commerce Commission:

"On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring different sections into more intimate business and social relation, could never have

grown to any considerable magnitude, and in some cases, could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles which within small bulk or weight concentrate great value would on that system of making them be absurdly low; low when compared to the value of the article, and perhaps not less so, when the comparison was with the value of the service in transporting them."

1 Ann. Rep., I. C. C. (1887), pp. 30, 31.

Where severe competition exists, as at Atlanta and Opelika, it is impossible for carriers to be controlled, either by the relative cost, or the relative value of the service; because each must accept the lowest rate offered by any one of the competing lines, or all, except one, must abandon the competitive traffic.

If it be held that it is unlawful for carriers to accept competitive rates which do not pay "interest," other "fixed charges," and "dividends," in addition to cost of movement, it will as certainly prevent the carriage of competitive traffic, as the application of the same principle will prevent the transportation of low grade traffic, which probably constitutes two-thirds of the railroad tonnage of this country.

XCIII.

The First Section Continued.

It was said by the Court of Appeals in the cases at bar that:

"As no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances

and conditions, it is manifest that it cannot be applied to traffic that is subject to severe competitive conditions."

I. C. C. vs. W. & A. R. R. Co. et al., 93 Fed Rep., p. 90.

To paraphrase the language just quoted, it is manifest that rates, such as the shorter distance rates in these cases, cannot be applied to traffic that is subject to severe competitive conditions, such as is the Atlanta and Opelika traffic.

The local traffic of a railroad is the only traffic upon which it can rely, with any degree of certainty, to yield the revenue necessary to pay operating expenses, and a fair return upon the value of that which it employs for the public convenience. A railroad company has the right to so adjust its local rates as that, in connection with such revenue as it may be able to secure from competitive traffic, they will pay operating expenses, fixed charges, and a fair return upon the value of the investment. Such local rates are no more than fairly compensatory, and therefore they are not unreasonably high in themselves. A basis of local rates so adjusted is always higher per ton per mile than can be obtained upon traffic that is subject to severe competitive conditions; and if carriers are to be prohibited from accepting less rates on severely competitive traffic than they are compelled to charge upon their local traffic, they must necessarily abandon the competitive traffic—and whenever they do so, railroad competition in this country will, of course, be at an end.

XCIV.

The First Section Continued.

Counsel for appellant in the court below quoted the following from the opinion of this Court in Smyth vs. Ames, 169 U. S., p. 541, known as the "Nebraska Maximum Rate Case:"

"Nor can the carrier justify unreasonably high rates on domestic business, upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business."

If the word "local" be substituted for the word "domestic," and the word "competitive" be substituted for the word "interstate," the application, which counsel desires to make of the language quoted, will be obvious.

The quotation, however, has no application, because in the cases at bar, the appellees do not seek to justify "unreasonably high rates" on their local business. They insist that the shorter distance rates are not "unreasonably high." They also insist that the Atlanta and Opelika traffic is not carried at "a loss." The uncontradicted testimony in this case is, that Atlanta and Opelika traffic pays something more than the cost of its movement; a fact which demonstrates that instead of its being carried at a loss, it is carried at a profit, though the profit may be very small. The appellees therefore have no occasion to justify the shorter distance rates upon the ground that they are necessary to meet losses incurred by reason of their acceptance of the Atlanta and Opelika rates.

XCV.

The First Section Continued.

The Atlanta and Opelika rates are fixed absolutely by competition, which prevents the appellees from securing at that point rates which are fully compensatory. And the question recurs, though in a slightly different form, whether competitive rates are unreasonably low, within the purview of the law, simply because

higher rates might reasonably be charged, if competition would permit.

In the language of the Court of Appeals in the cases at bar:

"What is a reasonable action or a reasonably remunerative rate for carriage at a given time and place necessarily has relation to the circumstances and conditions bearing upon the actor or upon the carrier at the time and place."

93 Fed. Rep., p. 91, I. C. C. vs. W. & A. R. R. Co. et al.

The circumstances and conditions bearing upon the carriers at Atlanta and Opelika compel them to accept rates, which, while they do not pay anything toward "interest," other "fixed charges," or "dividends," do pay more than the cost of movement of the Atlanta and Opelika traffic, and therefore yield some profit, though it may be very small. I contend that such rates, so forced upon the carriers by competition, are reasonable, within the purview of the law, notwithstanding very much higher rates would also be reasonable, if the circumstances and conditions at Atlanta and Opelika were such that the carriers could obtain higher rates than those which they now accept. The error of counsel for the appellant consists in supposing that in order for a rate to be reasonable, it must be represented by some fixed and invariable amount; whereas the truth is the amount of a reasonable rate not only may, but should, vary with the circumstances and conditions under which it is charged, or accepted.

XCVI.

The First Section Continued.

Counsel for appellant, in the Court below, contended that:

If the rates to competitive points are reasonably high, notwithstanding competition, then competition is no justification for a greater charge for the shorter haul.

Competition is not relied on in this case as a justification for a greater charge to the shorter distance points. It is relied upon as a justification of a lesser charge for the longer haul to Atlanta and Opelika.

Rates to competitive points may be reasonably high, considering the competitive circumstances and conditions under which they are accepted, and yet they may be so low as not to be *fully* compensatory, though they may yield *some* profit over and above the additional cost of the movement of the competitive traffic. In such a case I contend that the competition, which forces the acceptance of rates which, though reasonably high under the circumstances and conditions under which they are accepted, might reasonably be materially higher, were it not for the competition, does justify a lesser charge for the longer haul to a competitive point, like Atlanta or Opelika, than for the shorter haul to an intermediate local point.

XCVII.

The First Section Continued.

Counsel for appellant, in the Court below, contended that Cincinnati, New York, and other markets compete with each other in the sale of goods at the shorter distance points, as well as at Atlanta and Opelika. The fact is conceded; but in their competition, they recognize and act upon the fact that the rates to the shorter distance points are higher than those to Atlanta and Opelika; and so far as this record shows, none of those competing markets have ever demanded, or even requested that the rates to the shorter distance points shall be made as low as those to Atlanta and Opelika.

I also concede that the same lines of transportation that compete for business from the East and West to Atlanta and Opelika, compete for business to the shorter distance points; but in

their competition, they recognize and act upon the fact that the rates to the shorter distance points are higher than the rates to Atlanta and Opelika; and so far as this record shows, none of those lines of transportation have ever demanded, or even requested that the rates to the shorter distance points be made the same as the rates to Atlanta and Opelika.

XCVIII.

The Power of This Court to Modify the Order Made by the Commission.

Counsel for appellant will contend that this Court "may modify the orders of the Commission, or make such new or different orders as, under the law and 'the entire body of the evidence' may, in the judgment of the Court, be just and proper."

In the case of I. C. C. vs. Detroit, G. H. & M. Ry. Co., it was said by Judge Severens in his dissenting opinion, as follows:

"The Court is not authorized to make any general order or decree upon the matters at large as they shall appear before it, but is given power simply to award its process if it judicially approves the order of the Commission. If it does not find it to have been warranted by law, its power and duty are at an end."

57 Fed. Rep., 1013, 1014.

He also used the following language: "But, as already said, the Court can make no new order. The order of the Commission stands or falls as made."

57 Fed. Rep., p. 1019.

See also 83 Fed. Rep., p. 267, Farmers' Loan & Trust Co. vs. N. P. Ry. Co.

The proposition thus announced by Judge Severens was af-

firmed by the U. S. Circuit Court of Appeals for the Sixth Circuit, in 74 Fed. Rep., p. 805. The fourteenth head-note of the opinion of that Court is as follows:

"The power given to the courts to compel obedience to the 'lawful order' of the Commission being special and statutory, is strictly limited to the power conferred; and consequently the courts can only grant or refuse compulsory obedience to the order, and have no authority to modify or change it."

74 Fed. Rep., p. 805, D. G. H. & M. Ry. Co. vs. I. C. C.

It is true that the proposition as announced by Judge Severens, and affirmed by the Court of Appeals, was not referred to in the opinion of this Court in I. C. C. vs. D., G. H. & M. Ry. Co., 167 U. S., p. 633. But this Court said nothing in disapproval of the proposition.

In the case of I. C. C. vs. D. L. & W. R. Co. et al., in the Circuit Court for the Northern District of New York, Wallace Circuit Judge, in speaking of the power of the Circuit Court, said:

"The Court cannot substitute, for an order actually made, one such as the Commission might or should have made, or such as the Commission intended to, but failed to, make. This Court has no revisory power over the orders of the Commission. Its function in a proceeding like this is merely to inquire whether the respondents, the common carriers, have refused or neglected to perform any lawful order or requirement of the Commission. It cannot undertake to decide whether the respondents have violated one which the Commission might have lawfully made. It is not a violent presumption that if the order had been, in terms, one such as the Commission intended to make, the respondents would have contested its propriety, and refused to obey it. But such an issue is not here. As framed, the respondents, in my judgment, were justified in refusing to obey it."

I. C. C. vs. D. L. & W. R. Co., 64 Fed. Rep., p. 723.

Counsel for appellant may refer to the following language in the opinion of the Circuit Court in what is known as the "Social Circle cases."

"The Commission denied the power of this Court to hear the case upon any other issues, pleadings, or facts, than those presented to the Commission. It is claimed that the case is to be determined with reference to what the Interstate Commerce Commission had before it, and that no additional issues or questions should be raised, or other evidence taken. The language of the act of Congress does not support this contention. . . . This question may be considered, therefore, as settled, not only by the language of the act of Congress, but by authority, against the position assumed by counsel for the Commission."

I. C. C. vs. C. N. O. & T. P. Ry. Co., 56 Fed. Rep., pp. 934, 935.

In the "Social Circle case," counsel for the Commission did not assume the position that the Circuit Court had the power to modify an order made by the Commission, or to make a new order of its own. No such question was involved in that case. The question with reference to which the language just quoted was used by the Court, was whether the Circuit Court, in its examination into the legality of an order, as made by the Commission, was restricted to the pleadings and evidence used before the Commission, or could consider new and additional evidence taken for the first time in the Circuit Court.

Counsel for appellant may quote the following language from the opinion of this Court in the case of Interstate Commerce Commission vs. Alabama Midland Ry. *et al.*, 168 U. S., p. 175, viz.:

"It has been uniformly held by the several Circuit Courts and the Circuit Courts of Appeal in such cases that they *are not restricted to the evidence adduced before the Commission,* nor

to a consideration merely of the power of the Commission to make the particular order under question, but that *additional evidence may be put in by either party*, and that the duty of the Court is to decide, as a Court of Equity, upon the entire body of evidence."

It is as true of the "Alabama Midland Case," as it is true of the " Social Circle Case," that counsel for the Commission did not assume the position that the Circuit Court had the power to modify an order made by the Commission, or to make a new order of its own. No such question was involved in either of those cases. The question with reference to which the language above quoted was used by the Court in both cases, was, whether the Circuit Court, in its examination into the legality of an order as made by the Commission, was restricted to the pleadings and evidence used before the Commission, or could consider new and additional evidence taken for the first time in the Circuit Court.

Counsel for appellant may quote the following language from the opinion of Judge Sage in I. C. C. vs. C. N. O. & T. P. Ry. Co. et al., known as the " Cincinnati and Chicago Freight Bureau Cases," viz.:

" The Court is to sit as a court of equity, without the formal proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises. It is so provided in section 16 of the act. The intention of Congress evidently was to vest in the Court a large discretion."

64 Fed. Rep., pp. 984, 985.

In those cases, counsel for Commission did not assume the position that the Circuit Court had the power to modify an order made by the Commission, or to make a new order of its own. No such question was involved in those cases. The question with reference to which the language above quoted was used by the Court was whether the Circuit Court, in its examination into the

legality of an order as made by the Commission, could consider a transcript of the testimony taken before the Commission as a part of the record. See 64 Fed. Rep., p. 983. His Honor held that though the testimony taken before the Commission was not a part of the record, either party should be allowed to use as evidence any testimony taken before the Commission, which is competent and relevant. Such action was regarded by the Court as a proper exercise of the "large discretion" vested in it by the Act; and it was considered by the Court as doing "justice in the premises" to allow either party to use the testimony taken before the Commission, though it was not technically a part of the record. The question as to whether the Court had power to modify an order made by the Commission, or to make a new order of its own, was not discussed by counsel nor considered by the Court in those cases.

Counsel for appellant may quote the following language used by Judge Lurton in the case of Shinkle Wilson & Kreis Co. vs. L. & N. R. R. Co. et al., 62 Fed. Rep., p. 693, viz.:

"If it shall then appear, on all the evidence heard and submitted, that the order of the Commission *was lawful* and reasonable, and that it has been violated, it shall be lawful for such Court to issue a writ of injunction, or other proper process, to prevent further disobedience of such order. Now, it is well settled that the Court is not the mere executioner of the orders of the Commission. The suit in this Court is an original and independent proceeding. This Court is not confined to a mere examination of the matter as heard by the Commission. It proceeds to hear the complaint *de novo.*"

In that case, counsel for the complainants did not assume the position that the Circuit Court had the power to modify an order made by the Commission, or to make a new order of its own. No such question was involved in that case. The question with reference to which the language just quoted was used by the

Court, was whether the Court was bound to issue a *preliminary* injunction to compel a carrier to obey an order made by the Commission in reference to freight rates, where the answer of the carrier denied that said rates were unreasonable or unjust, and denied the legality of said order.

Counsel for appellant may quote the following language from the opinion of this Court in the case of I. C. C. vs. Alabama Midland Ry. Co. referred to above:

"Much less do we think that it was the intention of Congress that the decision of the Commission, if applied to, could not be *reviewed* by the Court. The provisions of section 16 of the Act, which authorize the Court to 'proceed to hear and determine *the matter* speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner *as to do justice in the premises,* and to this end, such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful, to enable it to form *a just judgment in the matter of such petition,' extend* as well to an inquiry or proceeding *under the fourth section* as to those arising under the other sections of the Act."

The italics are mine.

In using the language just quoted, this Court was not discussing the question as to whether the Circuit Court can modify or change an order as made by the Commission; and therefore, it had no idea of disapproving the proposition announced by Judge Severens, and affirmed by the Court of Appeals in the case of I. C. C. vs. D. G. H. & M. Ry. Co. referred to above.

In using the language just quoted from the opinion in the Alabama Midland Ry. case, this Court was merely combating an argument which had been pressed upon it by counsel for the Commission to the effect that *under the fourth section,* the action

of the Commission was conclusive, and could not be reviewed by the courts at all. This Court decided however, that the power of *review* by the courts extends "as well to an inquiry or proceeding *under the fourth section*, as to those arising under the other sections of the Act."

168 U. S., p. 174.

The power of *"review"* referred to by this Court, is confined to a "review" of the question as to whether the order as made by the Commission is lawful. If upon such a "review," the Court finds that the order is lawful, it awards its process to enforce it. If upon such "review," the Court finds that the order as made is not warranted by law, the power and duty of the Court are at an end.

"The matter" which the Court is authorized to *"hear and determine:"* and *"the premises"* in which the Court is to *"do justice:"* and *"the matter of such petition"* in which the Court is "to *form a just judgment,*" all mean one and the same thing, viz., "to hear and determine," and "to form a just judgment" on, the question whether the order *as made by the Commission, is lawful*, or not.

The sixteenth section of the Act to Regulate Commerce provides that whenever any common carrier shall refuse or neglect to perform "any *lawful* order or requirement of the Commission," the Commission, or any one else, may apply to the Circuit Court of the United States, and said court "shall have power to hear and determine the matter" "speedily as a court of equity," "in such a manner as to do justice in the premises." The Court may prosecute all such inquiries as may be needful to enable it "to form a just judgment in the matter of such petition;" and if it be made to appear to such court on such hearing or on report of any such person or persons, that the *lawful* order or requirement of said Commission drawn in question, has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction, etc."

It will be seen that the jurisdiction of the Circuit Court, *under section 16,* is confined to the enforcement of a LAWFUL order made by the Commission; and that said court is not authorized to make a new order of its own.

I concede that the Commission may assign an erroneous reason for making an order, and yet the order may, for other reasons, be lawful; and that, in such case, it is the duty of the Court to enforce it; but I contend that the Court has no power to enforce an order of the Commission which is *not* lawful; or to make an order of its own, under section 16, which is *substantially* different from the order made by the Commission.

Under sections 8 and 9 of the Act to Regulate Commerce, any one who complains that the Act has been violated by a common carrier is given an action for damages in the courts of the United States. But if instead of resorting to those courts, he elects to apply to the Commission, as he may do under section 16, he must be prepared to maintain the *lawfulness* of such order as the Commission may make in his behalf; or he cannot demand of the Circuit Court an enforcement of the order.

Section 9 provides that any person shall have the right to pursue his remedy in court, or his remedy before the Commission; but that he shall not have the right to pursue both remedies. According, however, to the contention of counsel for the appellant a party may elect to apply to the Commission, and having obtained an order from it he may, under section 16, apply to the Court for an enforcement of the order; and, notwithstanding the Court may be of the opinion that the order of the Commission is unlawful, it is the duty of the Court to give to the party all the relief to which he would have been entitled, if he had, in the first instance, applied to the Court under sections 8 and 9 of the Act. If the contention of counsel be correct, the party, instead of being forced to elect between the Commission and the

Court, obtains the advantage of the jurisdiction of the Court, as well as that of the Commission.

In the case of I. C. C. vs. E. T. V. & G. Ry. Co. et al., Judge Severens did not hold that the Court had the right to "modify the order of the Commission" or to make a "new or different order" of its own. Speaking of the order made by the Commission in that case, he said:

"The legal reason given may be wrong and the order right, if upon the facts, the latter (i. e., the order) should be found by the Court TO BE WARRANTED BY LAW. Nor would it affect the duty of the Court if the Commission had founded its order upon one provision of the Act, and the facts brought the case within some other. THE QUESTION, THEREFORE, IS WHETHER THE ORDER MADE WAS A LAWFUL ONE *in the circumstances as they are made to appear.*"

85 Fed. Rep., p. 110.

In the case just cited, Judge Severens did not "modify the order of the Commission," nor did he make a "new or different order" of his own. On the contrary, he "ordered, adjudged and decreed that *the order* MADE BY THE INTERSTATE COMMERCE COMMISSION be in all things affirmed and made the order of this Court," etc.

In his argument in the Court below counsel for appellant said:

"The orders of the Commission, as we have seen, are simply that the rates to the shorter distance points shall not be higher than the rates to the longer distance point, *and it is left to the discretion of the carriers to comply with these orders by advancing the rates to Atlanta and Opelika,* or by reducing the rates to the shorter distance points, or by both such advance and reduction in certain proportions."

Again he said:

"It would appear, however, that the orders of the Commission should be complied with by reducing the rates to the shorter distance points, *and not by advancing the rates to the longer distance points.*"

If I understand the object of the extract last quoted, counsel expects to ask this Court to materially modify the order of the Commission, or rather to make a new order of its own. In this: that whereas under the order of the Commission, the appellees are given the option, either to advance the rates to Atlanta and Opelika, or to reduce the rates to the shorter distance points, this Court will be asked to take away from them that option, and to order that they shall, in no event, make any advance in the rates to Atlanta or Opelika.

For the reasons above set forth in this section, I submit that this Court can neither make any such material modification of the Commission's order, nor make any such new order of its own.

Respectfully submitted,

ED. BAXTER,

Solicitor for Appellees, as of Record.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1900.

NO. 69.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE WESTERN & ATLANTIC RAILROAD CO., ET AL., Appellees.

NO. 68.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD COMPANY, ET AL., Appellees.

NO. 70.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

vs.

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, ET AL., Appellees.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

Rejoinder Argument of ED. BAXTER,

Solicitor for Appellees as of Record,

I.

Counsel for appellant on page 5 of his reply argument says:

" It is urged as a ground for not enforcing the orders of the Commission that they simply prohibit the charging of higher rates

to the shorter than to the longer distance points, and that, therefore, the carriers may still practice discrimination under them to the extent of making the shorter distance rates as high as the longer distance rates."

What I did urge was that:

"If it constitutes undue preference in favor of the longer distance points, to charge less to them than to the shorter distance points, it constitutes unjust prejudice against the shorter distance points, to charge as much to them as to the longer distance points. *If distance is to be the controlling factor* in determining whether undue preference or undue prejudice exists in a given case *all rates must be constructed upon a mileage basis.*"

If the shorter distance rates in these cases ought to be constructed upon a mileage basis, all other railroad rates in this country should be constructed upon a mileage basis; and to construct all the railroad rates in this country upon a mileage basis would be to destroy all long-distance traffic.

See my argument pp. 90-94, pp. 127-131.

II.

Counsel on page 5 of his reply argument says: "Section 4 of the law simply forbids the greater charge for the shorter than the longer haul. It does not expressly forbid as high a charge for the shorter as for the longer haul. Therefore, under section 4 the carrier may charge as high a rate for a shorter as for a longer haul."

Section 4 does not forbid the greater charge for the shorter than the longer haul unless the circumstances and conditions are substantially similar.

The competition at Atlanta and Opelika renders the circumstances and conditions at those points substantially dissimilar from the circumstances and conditions at the shorter distance points.

It is virtually conceded that the Commission erred in hold-

ing that the shorter distance rates in these cases are prohibited by the fourth section.

It is also virtually conceded that unless the shorter distance rates are prohibited by the third section, or by the first section they are not prohibited at all.

They are not prohibited by the third section unless they constitute an undue preference of the longer distance points; and unless all rates must be made upon a mileage basis, the mere fact that the shorter distance rates are as high, or even higher than the longer distance rates, does not constitute an undue preference of the longer distance points.

"The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act."

162 U. S., pp. 219, 220. T. & P. Ry. vs. I. C. C.

III.

Counsel on page 6 of his reply argument says: "The Commission's orders are consistent with the view that the force of competition is somewhat greater at Atlanta and Opelika than at the shorter distance points."

This statement of counsel is a virtual concession that the rates at Atlanta and Opelika are the result of actual and effective competition at those points; and is wholly inconsistent with an argument made by him to the effect that the rates at Atlanta and Opelika are made by agreement between the carriers.

The statement is also a virtual concession that the force of competition at Atlanta and Opelika is at least somewhat greater than at the shorter distance points.

IV.

Counsel on page 6 of his reply argument says: "That leaving the shorter distance rates as high as the longer distance rates will be making due allowance for any greater force of competition at Atlanta and Opelika than at the shorter distance points shown by the testimony in these cases."

Counsel virtually concedes that the force of competition at Atlanta and Opelika is at least somewhat greater than at the shorter distance points, but he does not undertake to say, or even to suggest, how much greater it is.

It is a mere assumption to state that "leaving the shorter distance rates as high as the longer distance rates will be making due allowance for any greater force of competition at Atlanta and Opelika than at the shorter distance points," unless there is some evidence to show how much greater the force of competition is at Atlanta and Opelika, than it is at the shorter distance points.

See my argument pp. 127-131.

My contention is that the force of competition at Atlanta and Opelika has been sufficiently great to compel the acceptance of the precise rates which obtain at those points; and that the force of such competition as there may be at the shorter distance points, has never been sufficient to compel the acceptance of any rates lower than the precise rates which obtain at those points.

See my argument pp. 227, 228.

V.

Counsel on page 6 of his reply argument says:

"If the rates to the shorter distance points are made not higher than the rates to the longer distance points, this will do away with the unjust or undue prejudice, or disadvantage to the shorter distance points shown to be the result of the higher rates to those points than to the longer distance points."

If railroad freight rates ought to be made on a mileage basis the shorter distance points are entitled to *lower* rates than the longer distance points; and therefore it will "*not* do away with the unjust or undue prejudice or disadvantage to the shorter distance points" to make the rates to those points not higher than the rates to the longer distance points.

The whole question in these cases, so far as the third section of the act is concerned, is whether it constitutes unjust or undue prejudice to construct railroad freight rates otherwise than upon a mileage basis; and if it be held that it does, then all the railroad rates in this country must be made upon a mileage basis.

VI.

Counsel for appellant on page 7 of his reply argument says:

"If the Social Circle rate is made the same, $1.14 per hundred pounds, Atlanta merchants *cannot* lay down at Social Circle goods originally shipped from New York at the same aggregate rate as that on which the Social Circle merchant could place them there. The Atlanta merchant would have to pay the $1.14 rate to Atlanta plus the local rate of 30 cents back to Social Circle, whereas the Social Circle merchant would only pay the $1.14 rate."

This contention of counsel would place the *consumers* who reside at Social Circle at the mercy of Social Circle merchants; whereas, they now have the benefit of the fact that Atlanta merchants can compete with Social Circle merchants in the sale of goods at Social Circle. This Court has said that among other facts which are to be taken into consideration in construing the act to regulate commerce is the welfare and advantage "of the great body of the citizens of the United States who constitute the *consumers* and recipients of the merchandise carried."

162 U. S., p 218. T. & P. Ry. vs. I. C. C.

Again, this Court has said "that the welfare of the community which is to receive *and consume* the commodities" is to be considered.

162 U. S., p. 234. T. & P. Ry. vs. I. C. C.

Counsel seems to suppose that the chief object of the act to regulate commerce is to give local merchants a monopoly of local traffic without regard to the effect upon local consumers.

VII.

Counsel for appellant on page 7 of his reply argument says: "As to *intermediate territory*—that is, territory between Social Circle and Atlanta—the Social Circle merchant having the same rate as the Atlanta merchant, could sell goods at a point *half way between Social Circle and Atlanta* on terms of equality with the Atlanta merchant so far as rates are concerned, and would have the advantage over the Atlanta merchant in territory between *Social Circle* and the half way point."

If the Atlanta merchant were the only competitor with whom the Social Circle merchant would have to contend, the statement of counsel would be correct. But if it be held that the rates from New York to Social Circle must not be higher than the rates to Atlanta, it must also be held that the rates from New York to none of the other local stations on the Georgia Railroad must be higher than the rates to Atlanta.

The order of the Commission in case No. 68 enjoined the defendants from charging any higher rates to Greensboro, Madison, Social Circle, Covington, Conyers or Stone Mountain than are charged to Atlanta.

Trans. No. 68, pp. 17, 18.

Neither the Commission nor this Court would think for a moment of making a special exception in favor of Social Circle; for to do so would be to give Social Circle an undue preference over the other local stations on the Georgia Railroad. If the rates from New York to Social Circle are to be made as low as the rates to Atlanta, a similar order will have to be made with reference to all the other local stations on the Georgia Railroad; and the result will be to establish a blanket tariff quoting the same rates from New York to each of the local stations on the Georgia Railroad, which rates would be not higher than the rates to Atlanta.

As a merchant at Social Circle would have to pay the same rate on goods from New York as a merchant at Greensboro, or Stone Mountain, and as the Social Circle merchant, if he undertook to sell goods at Greensboro or Stone Mountain, would have to pay in addition to the New York rate a local rate from Social Circle to Greensboro or Stone Mountain, it is evident that he could not sell in competition with merchants at Greensboro, or Stone Mountain, if the amount of the local rate which he would have to pay is sufficient to affect the price which he would otherwise charge for his goods at Greensboro or Stone Mountain.

In other words, if the contention of counsel be sustained by the Court, the effect will be not only to prevent Atlanta merchants and Augusta merchants from selling goods to the consumers who reside at the local stations of the Georgia Railroad, but also to prevent the merchants at any one of those local stations from selling goods to consumers at any other local station; and the consumers at each of said local stations will be placed entirely at the mercy of the merchants at that local station.

That I am right, is demonstrated by the following calculation:

Social Circle is equidistant from Greensboro and Stone Mountain; the distance from Social Circle to each of them being 36 miles. (Trans. p. 27.)

The Georgia Railroad Commission first-class rate for 36 miles is 26 cents per hundred pounds. (Trans. No. 69, p. 105.)

A Social Circle merchant desiring to sell first-class goods at Greensboro would have to pay:

Rate from New York to Social Circle	$1 14
Local rate from Social Circle to Greensboro	26
Total	$1 40
Whereas, the Greensboro merchant would pay a rate from New York to Greensboro of only	$1 14
Making a difference in favor of the Greensboro merchant as against the Social Circle merchant of	26

VIII.

Counsel for appellant on page 8 of his argument says:

"The order of the Commission in the 'Social Circle case' (162 U. S., 184), approved by the Circuit Court of Appeals and by this Court, was the same as the orders in the present cases, namely, that the rates to Social Circle should not be made higher than the rates to Augusta."

It was not the intention of this Court to decide in the "Social Circle Case" that competition, though it be between carriers subject to the act, cannot be considered, provided it possesses the attribute of producing a substantial and material effect upon traffic in rate making.

175 U. S., p. 673. Louisville, etc., R. R. Co. v. Behlmer.

Counsel for appellant on page 9 of his reply argument says:

"We have also a precedent for the orders in the present cases in trunk-line territory, where the rates to shorter distance points are sometimes made *as high as* the rates to longer distance points."

The fact that rates in trunk-line territory are made as high to shorter distance points, as to longer distance points, shows that where competition conflicts, distance is not allowed to control in that territory, any more than in Southern territory.

If Southern rates must be made according to distance, so must rates in the trunk-line territory. In fact, all railroad rates will have to be made according to distance, or mileage.

IX.

Counsel for appellant on page 9 of his reply argument says:

"If the Commission were of the opinion that the shorter distance rates in a given case should be lower than the longer distance rates, it could only so order, and *could not prescribe the lower rates.*"

If the Commission were of the opinion that the shorter distance rates in a given case should be lower than the longer distance rates, while it could not prescribe the lower rates, it could report its opinion as to how much lower the shorter distance rates should be than the longer distance rates.

But the Commission, instead of doing so in these cases, issued orders which permit the defendants to charge rates as high to the shorter distance points, as to the longer distance points.

X.

Counsel for appellant on page 11 of his reply argument says:

"We exhibited before the Court the following diagram, illustrating the combination of the through rate from New York to Atlanta with the high local back to Social Circle as the through rate on a shipment from New York to Social Circle *direct:*

"The large line underneath the small line between Atlanta and Social Circle represents the high local rate charged as a part of the through rate on goods shipped from New York to and *delivered* at Social Circle."

It will be noticed that he uses a dotted line of the least possible width to illustrate the through rate from New York to Atlanta, and that underneath that line he places a large line to represent "the high local rate charged as a part of the through rate on goods shipped from New York to and delivered at Social Circle." The large line underneath the small line is made to look like an "excrescence;" and the illustration is positively misleading.

It is conceded that the rates charged by defendants from New York to Social Circle are as much through rates as those charged from New York to Atlanta. Through bills of lading are issued from New York to Social Circle, just as from New York to Atlanta. Freight from New York to Social Circle is

delivered at Social Circle, without being carried through Social Circle to Atlanta and then back to Social Circle.

The rail and water mileage from New York to Atlanta is made up as follows:

New York to Charleston	250 miles.
Charleston to Augusta	137 miles.
Augusta to Atlanta	171 miles.
Total	558 miles.

See Trans. No. 69, p. 27.

The first-class rail and water rate from New York to Atlanta is $1.14 per hundred pounds.

See Trans. 69, p. 35.

The first-class rail and water rate per ton per mile from New York to Atlanta is therefore 4.09 cents.

The rail and water mileage from New York to Social Circle is made up as follows:

New York to Charleston	250 miles.
Charleston to Augusta	137 miles.
Augusta to Social Circle	119 miles.
Total	506 miles.

See Trans. No. 69 p. 27.

The first-class rail and water rate from New York to Social Circle is $1.44 per hundred pounds.

See Trans. No. 69, p. 27.

The first-class rail and water rate per ton per mile from New York to Social Circle is therefore 5.39 cents.

It will be seen that the rail and water rate per ton per mile from New York to Social Circle is $1\frac{33}{100}$ times the rail and water rate per ton per mile from New York to Atlanta; or to state it differently, if the rail and water rate per ton per mile from New York to Atlanta be represented by.....1
the rail and water rate per ton per mile from New York to Social Circle would be represented by.....$1\frac{33}{100}$

The rail and water mileage from New York to Stone Mountain is made up as follows:

New York to Charleston	250 miles.
Charleston to Augusta	137 miles.
Augusta to Stone Mountain	155 miles.
Total	542 miles.

Trans. No. 69, p. 27.

The first-class rail and water rate from New York to Stone Mountain is $1.32 per hundred pounds.

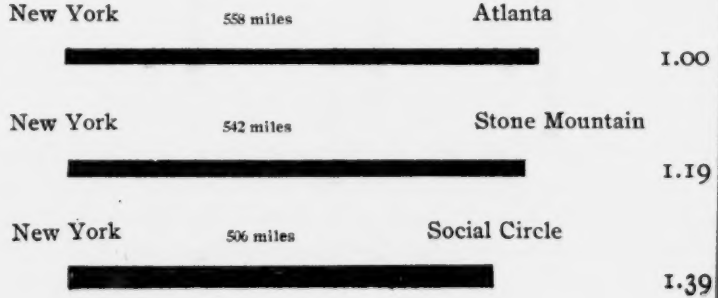
See Trans. No. 69, p. 27.

The first-class rail and water rate per ton per mile from New York to Stone Mountain is therefore 4.87 cents.

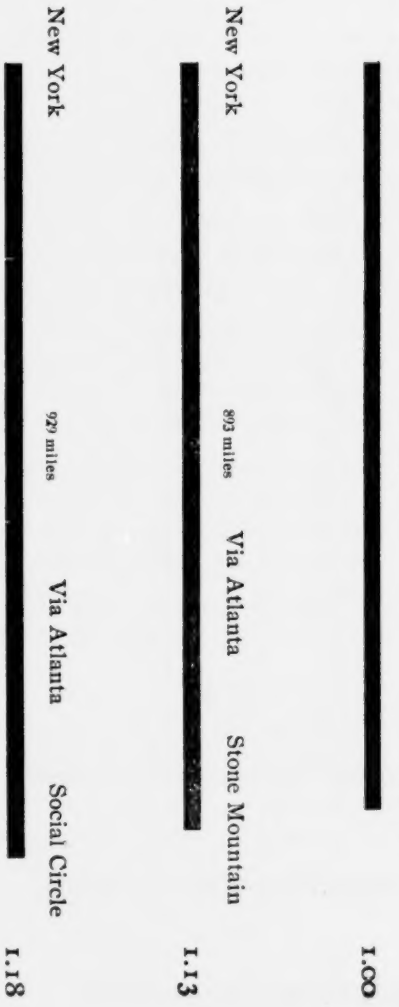
It will be seen that the rail and water rate per ton per mile from New York to Stone Mountain is $1\frac{19}{100}$ times the rail and water rate per ton per mile from New York to Atlanta; or to state it differently, if the rail and water rate per ton per mile from New York to Atlanta be represented by.....1
the rail and water rate per ton per mile from New York to Stone Mountain would be represented by.....$1\frac{19}{100}$

The width of the first line in the following diagram (No. 2) represents the rail and water rate per ton per mile from New York to Atlanta; the width of the second line represents the rail and water rate per ton per mile from New York to Stone Mountain; and the width of the third line represents the rail and water rate per ton per mile from New York to Social Circle.

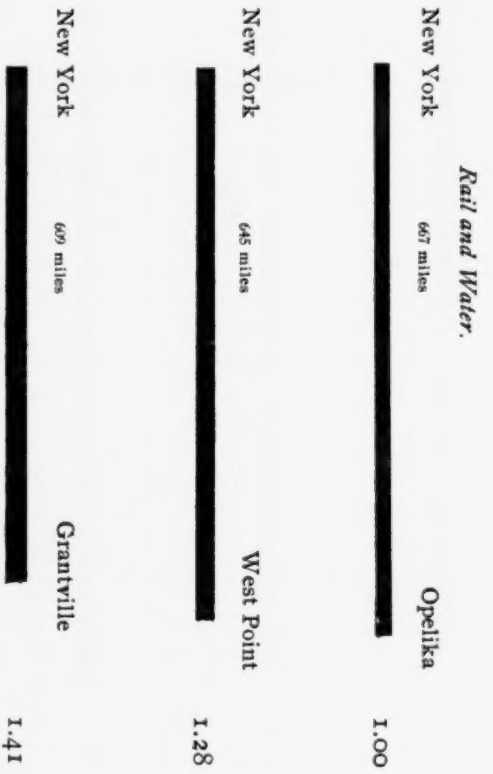
Rail and Water.



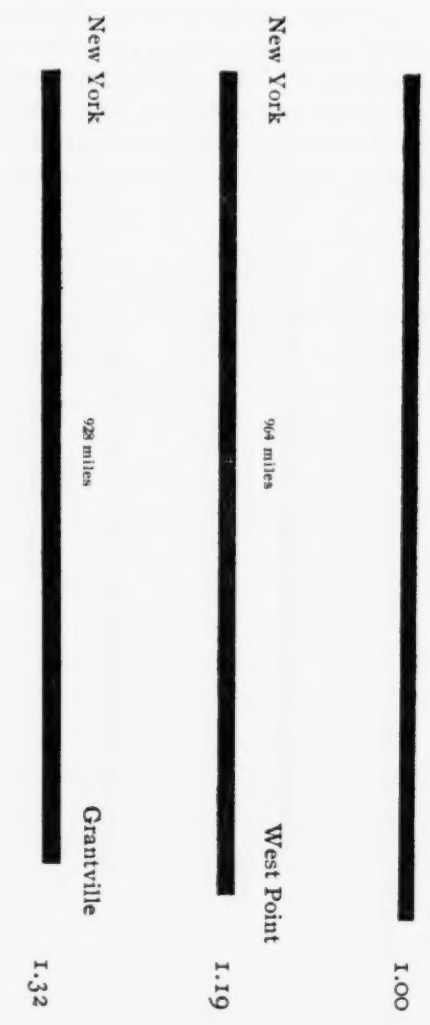
The width of the first line in the following diagram (No. 3) represents the all-rail rate per ton per mile from New York to Atlanta; the width of the second line represents the all-rail rate per ton per mile from New York, via Atlanta, to Stone Mountain; and the width of the third line represents the all-rail rate per ton per mile from New York, via Atlanta, to Social Circle.



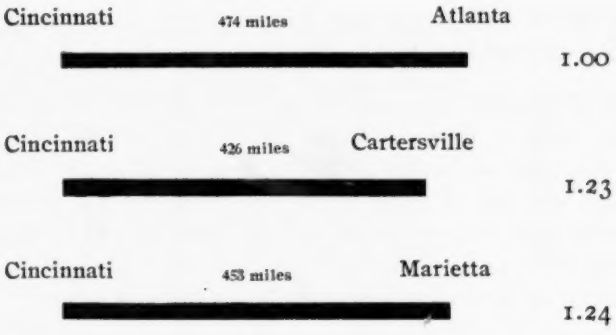
The width of the first line in the following diagram (No. 4) represents the rail and water rate per ton per mile from New York to Opelika; the width of the second line represents the rail and water rate per ton per mile from New York to West Point; and the width of the third line represents the rail and water rate per ton per mile from New York to Grantville.



The width of the first line in the following diagram (No. 5) represents the all-rail rate per ton per mile from New York to Opelika; the width of the second line represents the all-rail rate per ton per mile from New York to West Point; and the width of the third line represents the all-rail rate per ton per mile from New York to Grantville.



The width of the first line in the following diagram (No. 6) represents the all-rail rate per ton per mile from Cincinnati to Atlanta; the width of the second line represents the all-rail rate per ton per mile from Cincinnati to Cartersville; and the width of the third line represents the all-rail rate per ton per mile from Cincinnati to Marietta.



I have purposely selected two local stations on each of the three delivering roads involved in these cases. In case No. 69, which involves the Western & Atlantic Railroad, Marietta was selected because it is nearer to Atlanta than any of the other local stations affected by the order of the Commission in that case; and Cartersville was selected because it is about the same distance from Atlanta on that road, as Social Circle is on the Georgia Railroad.

In case No. 68, which involves the Georgia Railroad, Stone Mountain was selected because it is nearer to Atlanta than any of the other local stations affected by the order of the Commission in that case; and Social Circle was selected because appellant's counsel had already used that station in his diagram.

In case No. 70, which involves the Atlanta & West Point Railroad, West Point was selected because it is nearer to Opelika than any of the other local stations affected by the order of the Commission in that case; and Grantville was selected because it is about the same distance from Atlanta on that road as Social Circle is on the Georgia Railroad.

The proportions which the rates per ton per mile from New York and Cincinnati, respectively, to the longer distance points in these cases bear to the rates per ton per mile from New York and Cincinnati, respectively, to the shorter distance points, as shown by the transcripts in these cases, were furnished to the engraver with instructions to represent said proportions in the

width of the lines in diagrams numbers 2, 3, 4, 5 and 6 as accurately as it could be done.

While it will be seen that the rates per ton per mile to the shorter distance points, as shown by the width of the lines in said diagrams, are somewhat greater than the rates per ton per mile to the longer distance points, the differences are uniform throughout the entire length of the lines, and they are very slight indeed, when we remember that there is no such competition at the shorter distance points as at the longer distance points.

XI.

Counsel for appellant on page 12 of his reply argument says:

"That the rates to Social Circle in case 68 and to such other localities in the same category embrace a charge for the haul through them on to the basing point and a charge for a local haul back, *when those hauls are not in fact made.*"

I deny that the rates to Social Circle, or to any of the other localities referred to, embrace a charge for the haul through them on to the basing point and a charge for a local haul back. The charge is made for transportation from the point of shipment (New York) to Social Circle; it being distinctly understood by all parties that the freight is to be delivered at Social Circle, and that it is not to be carried through Social Circle to Atlanta and back again.

To illustrate: The first class rail and water rate charged by defendants from New York to Social Circle, a distance of 506 miles, is $1.44 per hundred pounds; which is equivalent to a rate of less than 6 cents per ton per mile.

I submit that a charge of $1.44 for carrying one hundred pounds of freight 506 miles, or a charge of less than 6 cents for carrying two thousand pounds of freight 1 mile, is reasonably low.

In the Alabama Midland case, on class goods shipped from New York, over the Alabama Midland Railway to Troy, there

was a combination rate, equal to a rate made by adding to the competitive rate from New York to Montgomery the local rate from Montgomery back to Troy; but the rate was made for transportation from New York to Troy, and not for transportation through Troy to Montgomery, and back to Troy.

See 168 U. S., p. 144. I. C. C. vs Alabama Mid. Ry. Co.
See my argument pp. 192, 193.

XII.

Counsel for appellant on page 14 of his reply argument states that "the rates from New York to LaGrange (case No. 70) are not the lowest combinations." He refers for his authority to his original printed argument for the Commission, page 162. On that page he quotes from the testimony of Mr. Calloway, who shows that the rate from New York to LaGrange on first-class freight is not the lowest combination. Mr. Calloway does not testify as to any of the other rates. But if the fact be as stated by counsel in his reply argument, it is doubtless a mere oversight on the part of rate clerks, and will be corrected. The fact certainly escaped the attention of the Interstate Commerce Commission, as no reference was made to it in the report and opinion of the Commission.

The principle upon which the defendants act, and which principle they undertake to defend, is to give to every local station the full benefit of all the competition that exists at the nearest competitive point; and if through oversight any rates have been put into LaGrange that are higher than the lowest available combination, they will be corrected.

Counsel on page 15 of his reply argument says that "the rates from Cincinnati to Acworth and Marietta (case No. 69) are not the lowest combinations." In this statement counsel is clearly mistaken.

The rates from Cincinnati to Chattanooga, Acworth, Marietta and Atlanta; and the rates from Chattanooga to Acworth and Marietta; and the distances from Atlanta to Acworth and Mari-

etta are shown in transcript 69, p. 23. The distance from Atlanta to Acworth as there shown is 35 miles; and the distance from Atlanta to Marietta as there shown is 21 miles. The rates for different distances, on the different classes of freight, as fixed by the Georgia Railroad Commission in its standard freight tariff, are shown in Trans. No. 69 p. 105.

The Commission reports that the rates from Cincinnati to all points north of Atlanta and south of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga.

Trans. No. 69, p. 23.

The following tables show that the rates from Cincinnati to Acworth, as well as the rates from Cincinnati to Marietta (being based on the Chattanooga combination, as found by the Commission), are lower than they would be if based upon the Atlanta combination:

RATES CINCINNATI TO ACWORTH.

	CLASSES.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
To Atlanta	107	92	81	68	56	46	28	35	28	24	48	53	48
Ga. Com. Rate 35 Miles	26	23	21	19	15	12	12	12	8	7½	15	19	16 ½
Total on Atlanta Combination	133	115	102	87	71	58	40	47	36	31½	63	72	64 ½
Chattanooga Combination	124	107	94	78	64	49	39	45	35	30	58	64	61

RATES CINCINNATI TO MARIETTA.

	CLASSES.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
To Atlanta	107	92	81	68	56	46	28	35	28	24	48	53	48
Ga. Com. Rate 21 Miles	20	18	16	14	12	10	10	10	7	6	12	14	14
Total on Atlanta Combination	127	110	97	82	68	56	38	45	35	30	60	67	62
Chattanooga Combination	127	109	96	79	65	50	38	45	35	30	56	65	62

XII.

Counsel for appellant on page 16 of his reply argument says that the order of the Commission in the Social Circle case had

two subdivisions; that in one it forbade the charging of higher rates from Cincinnati to Social Circle than were charged through Social Circle to Augusta; that in the other it directed that the rate from Cincinnati to Atlanta should be reduced from $1.07 to $1.00; that the Circuit Court of Appeals enforced the first subdivision of the order but denied the enforcement of the second subdivision; and he relies upon that case as a precedent for the proposition that an order of the Commission may be sustained in part and overruled in part.

The order of the Commission in the Social Circle case will be found reported in 162 U. S. 188; and while it contained two subdivisions, each subdivision was in substance a separate and distinct order, and neither the Court of Appeals, nor this Court, undertook to modify or change in the least that subdivision of the order which was enforced by those courts.

162 U. S. 188 C. N. O. & T. P. Ry. vs I. C. C:
See my argument pp. 228–237.

XIII.

Counsel for appellant on page 18 of his reply argument quotes a portion of a sentence in my argument as follows:

"Counsel for the carriers says, 'it is admitted that the public interest at the shorter distance points is discriminated against.'"
(Printed argument for carriers, p. 83.)

What I said was:

"That the public at the shorter distance points is discriminated against is admitted; but my contention is that the discrimination is not unlawful, because it is not *unjust*.

"The public at the shorter distance points may be injured (though not in a legal sense) in not being able to compete on equal terms with Atlanta or Opelika in common territory. But the public at Cincinnati, Boston, New York, Philadelphia and Baltimore, as well as the public at Atlanta and Opelika, are greatly benefited by the competition which exists at Atlanta and Opelika."

See my argument p. 83.

XIV.

Counsel for appellant on page 19 of his reply argument says:

"We have shown in both our oral and original printed arguments, that the public interests *of all the shorter distance points discriminated against for the* 138 *miles* between Atlanta and Chattanooga, for the 171 *miles* between Atlanta and Augusta, and for the 109 *miles* between Atlanta and Opelika, are of far greater magnitude than the public interest centered at Atlanta or Opelika, or both taken together."

Counsel assumes that the public interests of all the shorter distance points for the 138 miles between Atlanta and Chattanooga, for the 171 miles between Atlanta and Augusta, and for the 109 miles between Atlanta and Chattanooga, are represented *by the local merchants*; while I contend that said interests are represented *by the local consumers.*

Counsel contends that the public interests at the shorter distance points, in the territory indicated by him, will be best subserved by a policy which I have shown will give to the local merchants a monopoly of the traffic at their respective stations; while I contend that said public interests will be best subserved by giving to the local consumers the benefit of competition between their local merchants and the merchants at Atlanta, Augusta, Chattanooga and Opelika.

See 162 U. S. pp. 218, 234, T. & P. Ry. vs. I. C. C.

XV.

Counsel for appellant on page 19 of his reply argument says:

"That the business at shorter distance points will be enlarged and their demand for goods *from the shipping points* be increased, appears from the following considerations."

I have commented on this proposition in my argument pp. 106-111.

XVI.

Counsel for appellant on page 19 of his reply argument makes the following quotation:

"The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by a *larger supply*."

Joint Traffic Association case, 171 U. S., 505.

I have commented on said quotation in my argument pp. 111, 112.

XVII.

Counsel for appellant on page 21 of his reply argument says:

"Counsel for the carriers has not pointed out any way in which any *legitimate* interest of the public at Atlanta or Opelika will be injuriously affected by establishing a just relation between the rates to those points and to the shorter distance points."

I have never contended, or even intimated, that any interest of the public at Atlanta or Opelika will be injuriously affected "by establishing a *just* relation between the rates to those points and to the shorter distance points;" but I do contend that the relation which now exists *is* "*just*;" and that the new relation, which counsel seeks to establish, would *not* be "*just*."

He seeks to establish a relation of rates which would unjustly deprive Atlanta and Opelika of their legitimate competitive advantages to the benefit of which they are unquestionably entitled under the law.

See my argument pp. 100, 102. pp. 113-122.

XVIII.

Counsel for appellant on page 21 of his reply argument says:

"The testimony of the merchants at the shorter distance

points (the only testimony on the subject) is that *they now purchase their supplies of goods from Cincinnati, New York, etc., and not from Atlanta or Opelika.*"

This statement of counsel is very important. It shows that the present relation of rates does *not* place the merchants at the shorter distance points at the mercy of the merchants at Atlanta, Augusta, or Opelika.

Said statement also shows that the merchants at the shorter distance points are afforded by the present relation of rates a choice between purchasing their goods at Atlanta or Opelika, in in their own territory, or, at the larger markets of NewYork and Cincinnati.

Said statement also shows that the present relation of rates so far from unjustly discriminating in favor of Atlanta and Opelika, is such that merchants at the shorter distance points instead of purchasing their goods at Atlanta or Opelika, find it to their interest to purchase at New York or Cincinnati.

XIX.

Counsel for appellant on page 22 of his reply argument asks:

"Have Atlanta or Opelika any natural inalienable right or prerogative to supply surrounding localities with their goods, and *to have them debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati?*"

Counsel doubtless overlooked the fact that he had just admitted on page 21 of his reply argument, that the merchants at the shorter distance points "now purchase their supplies of goods from Cincinnati, New York, etc., and not from Atlanta or Opelika;" and if that admission be true it is impossible to believe that said merchants are "debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati."

XX.

Counsel for appellant on page 24 of his reply argument says:

"The Courts below having thus exercised their discretion by '*inquiring into the facts on their own account*,' it is not incumbent upon this Court to have the cases remanded to the Commission etc.'" * * * "The conclusions of the Commission on a *part only* of the evidence (that before it) cannot be of much value after the case has been reopened by the Court and new testimony has been taken."

I agree that the conclusions of the Commission "cannot be of much value after the case has been reopened by the Court."

I insist, however, that as the Courts below "exercised their discretion by inquiring into the facts on their own account," and as both the Circuit Court, and the Court of Appeals found the facts in favor of the appellees, this Court will not reverse, unless it finds something in the record which makes it its duty to draw a different conclusion from that arrived at by both the Circuit Court, and the Court of Appeals.

In the case of C. N. O. & T. P. Ry. Co. vs. I. C. C., this Court, acting upon the theory that the Court of Appeals had accepted and approved the conclusions of the Commission upon certain questions of fact, declined to reverse the Court of Appeals.

162 U. S., p. 194, C. N. O. & T. P. Ry. vs. I. C. C.

In the case of I. C. C. vs. Alabama Midland Ry., 168 U. S., p. 144, the Circuit Court, and the Court of Appeals, reversed the Commission, just as they did in the cases at bar. This Court affirmed the decree of the Court of Appeals in the Alabama Midland Railway case; and I submit that a similar decree should be rendered in the cases at bar.

XXI.

Counsel for appellant during the oral argument insisted that there is no evidence in the record that freight from Cincinnati or New York destined to local stations on defendants' lines is delivered at such local stations by local freight trains.

In transcript No. 69, p. 154, witness Brown says: "The through schedules are made on time freight, and they operate right straight on through, and with Acworth, or Calhoun, for instance, it is transferred at Chattanooga and then put on the local freight and goes down."

On page 140 of said transcript the same witness says: "It should also be borne in mind that the cost to the railroad is very much greater to handle traffic destined to local points than it is on through traffic. For example, the time between Chattanooga and Atlanta for through schedules is about seven to eight hours, while the time consumed by local trains, doing work at the local stations, is twelve to fourteen hours. Also the necessary expense at the local stations is more in proportion than at the terminal points, for the reason that there is not sufficient work to keep the agents and their assistants busy, while at the terminal points only sufficient force is kept to do the work."

With reference to the handling of through and local freight on the New York, New Haven and Hartford R. R., the Interstate Commerce Commission says: "The defendant carriers for the carriage of through freight from New York to Boston have fast trains which make no stops at local stations for the delivery of freight between New York and Boston. These freight trains are run through on rapid time, making close connection. For the transaction of local business along their lines they have local trains which stop at the local stations and receive and deliver freight in parcels usually, though sometimes in carloads, from, and to these local stations. * * * * * * The expense of operating these fast freight lines is greatly less than that of operating their local freight trains," etc.

3 I. C. Rep. p. 275 Right Col.

Counsel has insisted in presenting these cases as though freights shipped from New York or from Cincinnati, destined to local stations on defendants' lines, were carried all the way to such stations in the same train, with freight which is carried from New York or Cincinnati to Atlanta. He insists upon leaving out of consideration that when freight destined to local stations upon a railroad reaches the line of that road it is taken out of through trains destined to the other terminus of that road, and is put into local trains to be distributed, together with other local freight, at the various local stations along the line of that road; and it is conceded by all of the witnesses that the expense of handling freight in such local trains is very much greater than the expense of handling it in through trains.

Very respectfully submitted,

ED. BAXTER,

Solicitor for Appellees as of Record.

Supreme Court of the United States.

OCTOBER TERM, 1900.

68	The Interstate Commerce Commission, Appellant, *vs.* The Clyde Steamship Company, the Georgia Railroad Company et al.	Appeals from the United States Circuit Court of Appeals for the Fifth Circuit.
69	The Same *vs.* The Western and Atlantic Railroad Company et al.	
70	The Same *vs.* The Clyde Steamship Company et al.	

[April 8, 1901.]

Mr. Justice WHITE delivered the opinion of the Court.

These cases, with others of like character, originated in complaints brought before the Interstate Commerce Commission by the Railroad Commission of the State of Georgia in the names of the members of that body. Each complaint averred that the defendant carriers were guilty of wrong in that they were illegally charging a greater rate to certain shorter distance points than they were asking to certain longer distance points, in violation of the long and short haul clause of the fourth section of the act to regulate commerce, and, as ancillary to this complaint, that the rates exacted by the defendant carriers were unreasonable and amounted to both an undue preference and an unjust discrimination.

In case No. 68 the complaint was that the rates charged by the defendants for freight transportation, by continuous carriage, from the city of New York and other Eastern seaboard points to Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain, towns and stations situated on the line of the Georgia Railroad between Augusta, the eastern terminus of that road, and Atlanta, its western terminus, were greater in each case than the amounts charged and received for freight carried to the city of Atlanta, the longer distance point.

In case No. 69 the complaint was that the rates of freight charged by the defendants for freight transportation, by continuous carriage, from the city of Cincinnati and other Ohio River points to Marietta, Acworth, Car-

tersville, Kingston, Adairsville and Calhoun, towns and stations situated on the Western Atlantic Railroad between Chattanooga, the northern terminus of that road, and Atlanta, the southern terminus, were greater on each class than the amount charged and received for freight carried to Atlanta, the longest distance point.

In case No. 70 the complaint was that the rates of freight charged by the defendants for freight transportation by continuous carriage from the city of New York and other Eastern points to West Point, La Grange, Hogansville, Grantville and Newman—towns and stations on the Atlanta and West Point Railroad, Atlanta being the eastern terminus of said road and the town of West Point its western terminus—were greater on each class than the amount charged and received for freight to a longer distance point, viz., the city of Opelika, situated further west on a connecting railroad known as the Western Railroad of Alabama.

After issues made by answers and hearing had upon evidence introduced before the commission, that body entered an order in each case, in substance commanding the defendants to cease and desist from charging and receiving any greater compensation in the aggregate for the transportation of property between the points of initial shipments mentioned in the complaint and the shorter distance points therein referred to than was exacted to the more distant points specified in the various complaints. The order, however, contained a proviso that it should not be operative until a date designated to enable the defendants to apply, under the fourth section of the act, to be relieved from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation for a lesser than for a longer haul, under substantially similar circumstances and conditions. (5 I. C. C. Rep. 327; 4 Inter. Com. Rep. 120.)

The defendant carriers, not having availed of the permission thus accorded, and refusing to obey, the commission, in due time, began proceedings in equity in the Circuit Court of the United States for the Northern District of Georgia enforce obedience to its orders. In the Circuit Court additional testimony was taken. All the cases were considered and passed on together. The court decided that the commission had erroneously construed the statute in holding that competition which was actual and substantial in its effect upon rates, if resulting from the action of other carriers who were subject to the act to regulate commerce, could not produce the dissimilarity of circumstances and conditions provided in the fourth section of the act, so as to enable a carrier in adjusting rates to take into view such competition without the previous assent of the commission. It moreover found that the rates in controversy were in and of themselves just and reasonable, and did not give rise either to undue preference or unjust discrimination. The court, therefore, declined to enforce the order

of the commission. (88 Fed. Rep. 186.) On appeal to the Circuit Court of Appeals the decrees of the Circuit Court were affirmed. (95 Fed. Rep. 83.)

In deciding the *Alabama Midland case,* (168 U. S. 164,) we had occasion to refer to the opinion announced by the commission in the cases now under review, because the ruling of the commission in the matter which was examined in the Midland case was like the one made in the present cases. The opinion by which the commission sustained the ruling by it made in the East Tennessee, Virginia and Georgia case, which we have just examined and decided to be erroneous, was also expressly predicated on the opinion which the commission had previously expressed in these cases. It follows that the error committed by the commission, in interpreting the statute in these cases, has been at least twice heretofore pointed out in the decisions of this court, and hence further examination of the subject, is unnecessary. It will be seen from an inspection of the able opinions of the courts below that they expounded the statute in entire accord with the construction which we had previously given to it, and which we have again applied in the East Tennessee, Virginia and Georgia case. Despite, however, the error of law which the commission committed in these cases, and in consequence of which error it made no investigation of the facts but postponed the performance of its duty on this subject until a further application was made for relief, it is now urged that we should enter into an original investigation of the facts for the purpose of considering a number of questions as to discrimination, as to preference, as to reasonableness of rates, as to the relation which the rates at some places bore to those at others, in order to discharge the duty which the statute has expressly in the first instance declared should be performed by the commission. In the East Tennessee, Virginia and Georgia case, just decided, following the ruling made in *Louisville &c. Railroad Co.* v. *Behlmer,* (175 U. S. 648, 667,) and previous cases, we have held that, where the commission by reason of its erroneous construction of the statute had in a case to it presented declined to adequately find the facts, it was the duty of the courts, on application being made to them, to enforce the erroneous order of the commission not to proceed to an original investigation of the facts which should have been passed upon by the commission, but to correct the error of law committed by that body, and after doing so to remand the case to the commission so as to afford it the opportunity of examining the evidence and finding the facts as required by law. The investigation which we have given the questions which arise in these cases and the consideration which we have bestowed on the issues which were involved in the case of the East Tennessee, Virginia and Georgia Railroad have served but to impress upon us the necessity of adhering to that rule, in order that the statute may be complied with both in letter and spirit. Acting in accordance with

this requirement, whilst affirming the decree below which refused to enforce the order of the commission, we shall do so without prejudice to the right of the commission if it so elects to make an original investigation of the questions presented in these records.

The decrees of the Circuit Court of Appeals and of the Circuit Court must be modified by providing that the dismissal of the bills shall be without prejudice to the right of the Interstate Commerce Commission, if it so elects, to make an original investigation of the questions contained in the records pertinent to the complaints presented to that body, and, as so modified, said decrees must be affirmed.

And it is so ordered.

Mr. Justice HARLAN dissents.

True copy.

Test:

Clerk Supreme Court, U. S.